# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~[illegible]~~ 39

STEPHEN M. JONES, APPELLANT,

vs.

JOSEPH J. ANDREWS, P. REED, AND H. W. BRYSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED APRIL 13, 1860.

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2 UNITED STATES OF AMERICA:

Be it remembered that the circuit court of the United States for the district of West Tennessee was begun and held at the federal court-rooms in the city of Memphis, in said district, on the first Monday, it being the second day, of September, in the year of our Lord one thousand eight hundred and sixty-seven—present and presiding, the Hon. Connally F. Trigg, United States district judge for the districts of Tennessee; present, also, Abram S. Mitchell, clerk—when the following proceedings were had and entered of record, to wit:

*Bill.*

To the judges of the circuit court of the United States, presiding at Memphis, for the western district of Tennessee.

STEPHEN M. JONES, CITIZEN & RESIDENT OF Richmond County, Georgia,
*vs.*
JOSEPH J. ANDREWS, CITIZEN & RESIDENT OF city & Co. & State of N. York; P. Reed & H. W. Bryson, both citizens & residents of Shelby Co., Tennessee.

Complainant respectfully shews your honor that at the March
3 term, 1866, of this hon. court, the defendant aforesaid, Joseph J. Andrews, recovered against his co-defendants, Reed and Bryson, a judgment for the sum of $5,714\frac{99}{100}$—five thousand seven hundred and fourteen $\frac{99}{100}$ dollars—and costs of suit; which judgment yet remains in full force, unappealed from, and unsatisfied; and upon said judgment he has caused a writ of garnishment to be issued and served on compl't, requiring him to appear at the September term, 1866, of this court, and answer what he is indebted to said Reed and Bryson, or what effects of theirs he has in his hands.

The notes on which this judgment was founded, were given about the 1st day of Jan'ry, 1859, and were for the lease of the Commercial Hotel in Memphis, Tennessee.

This lease is herewith filed as Exhibit "A," and prayed to be taken as part of this bill.

4 By the terms thereof it was stipulated that Andrews leased said building from January, 1859, to January, 1864, and these notes were given for the payment of (with others) the rent periodically falling due.

Reed & Bryson occupied the hotel from the date of the lease to Sept., 1859, and paid up the lease notes as compl't supposes.

On the 1st Sept'r, 1859, Reed & Bryson sublet said hotel to compl't for the unexpired time of their lease, at the same rent, and compl't made to Reed & Bryson his notes falling due at the same times and for like sums as those of Reed & Bryson to Andrews, for the unexpired time.

In addition, compl't paid them about six thousand dollars for the furniture with which they had refitted the hotel.

Your honor will see from the lease of Andrews to Reed and Bryson, that a remnant of old furniture was left by Andrews in the hotel,
5 which was to be the property of Reed and Bryson at the termination of the lease, subject to a lien reserved by Andrews, for unpaid rent, and injury to the premises arising from neglect.

Andrews accepted compl't as his tenant, and received the notes made

by compl't to Reed & Bryson; and also received payment of them as they fell due, up to the 1st day of Jan'y, 1862.

Andrews visited Memphis twice and boarded with compl't in the hotel.

From January, 1862, compl't was unable to pay the notes as they fell due by reason of the existence of the rebellion.

All of compl't's clerks and white male employees were forced into the confederate army, and compl't was utterly unable to supply their places; his negroes employed were pressed by the confederate government and put to work on fortifications.

Compl't had two sons, and they, with his other employees, were forced into the army.

6 The profitable custom for hotels heretofore existing in Memphis was utterly destroyed by the stoppage of all business and travel, and the only substitute was the custom of soldiers, many of whom had nothing to pay, and the remainder could only pay in confederate treasury issues.

In addition to those difficulties, a fire occurred in the early part of 1862, which burnt the kitchen entirely out, and one side of the dining-room, and on one side of each of the wings; it destroyed the windows and the furniture in 12 or 15 rooms.

Most of this furniture which was burned was of the furniture left in the house by Andrews. Some four or five weeks elapsed before the injury occasioned by the fire to the building was repaired; and this, too, served to make it impracticable to carry on the hotel.

In the mean time, confederate issues had become the only currency, and was becoming almost worthless with any and every person.

7 Some five days before Memphis fell, compl't went south on private business, having no connection, mediately or immediately, directly or indirectly, with the rebellion or the army or the government of the confederacy, and expecting to return in a few days; but unfortunately for compl't, during his absence, Memphis fell into the hands of the military authorities of the United States, the lines were closed, and compl't found it impossible to return. Before leaving, compl't made arrangement with Dr. Hazzard and wife, to stay in the hotel and assist compl't's wife in taking care of the property. Whilst compl't was thus unavoidably, and without fault or wrong on his part, absent on the 12th day of August, 1862, defendant Andrews, by his agent, Sam. T. Morgan, compelled compl't's wife and family to leave the house, and took possession thereof and of all compl't's furniture, to the value of twelve

8 thousand dollars over and above the remnant left in the hotel by Andrews as aforesaid. A short time before compl't left he bought the bar-room furniture, including the bar mirrors, ware, &c., to the value of five hundred dollars or thereabouts.

Andrews, by his said agent, took possession of all the furniture.

At the time he drove complainant's family out of the house, he made an inventory of the furniture, then released the hotel and furniture to other parties, and, after they had used it for several months and again surrendered it up, he sold the whole or greater part of the furniture and appropriated the proceeds.

Compl't would further show your hon. that by the forcible & abrupt ejectment of the family of compl't out of the hotel by defendant Andrews, he was greatly and most inequitously injured, and put to very heavy pecuniary loss and expense, to wit, several hundred dollars.

Compl't would further show your honor that defendants are now

9 threatening and endeavoring to collect the notes made by him for the lease, including all the notes due from January, 1862, up to

the date of the expiration of the lease, and, indeed, have placed them in the hands of attornies at law for collection, who have presented them to complainant and demanded payment of them.

They have not yet sued compl't on said notes, but they have threatened to do so, and will proceed to sue at a very early day.

Complainant insists that he is not liable for the notes by reason of the premises, but the defendant Andrews is indebted to him for the furniture, and injuries done him by the forcible and wrongful ejectment of his family; that compl't is entitled to have his notes all delivered up and cancelled.

Compl't would further show and charge that Andrews procured his (compl't's) notes out of bank, and delivered them up to Reed & Bryson, although they were his, Andrew's, notes.

10 And the defendants Reed and Bryson permitted Andrews to obtain judgement in this hon. court by default against them without attempting to defend it.

Upon these circumstances compl't charges that the obtaining the judgement aforesaid by default and the handing over the notes of compl't by Andrews to Reed & Bryson, and their endeavoring to collect them off of this compl't is the result of a collusion and fraudulent agreement between Reed & Bryson and Andrews, to cheat and defraud compl't; and while they would unjustly collect the notes of compl't, Andrews, by the same means, would avoid a conflict with compl't, and hold on to the value of compl't's furniture, and escape responsibility for the wrongful and tortuous acts of his agent Morgan.

Compl't would further show your honor that he, compl't, is amply, and far more than amply, good for all his liabilities, while Reed
11 & Bryson are certainly, if not notoriously, insolvent, as compl't is informed and believes. Compl't further charges that Reed & Bryson have made some effort to inveigle compl't into paying some part of these claims, so as to fix his liability and to release Andrews at the same time.

Compl't insists that he is entitled, as he is advised, to the aid of this hon. court to have his said notes delivered up and cancelled, and the said Andrews and Reed & Bryson perpetually enjoined from selling, transferring, negotiating, and collecting said notes.

He is also entitled, as against said Andrews, to an account of the furniture of said compl't, which he did unlawfully convert to his own use and dispose of, and also of the damages resulting from the wrongful ejectment, as aforesaid, of his family, from the hotel, and a decree against him for the amount so to be ascertained. Compl't also insists that he is entitled to a discovery from defendants as to whether
12 Andrews or Reed and Bryson are the owners of compl't's said notes, as he has no means or evidence of finding out or discovering which of said parties are the holders of said notes except by a discovery under oath from them. They, so far as compl't is informed and believes or has been able to learn, alone know to whom said notes belong.

The premises considered, compl't prays that Joseph J. Andrews, a resident and citizen of the city, county, & State of New York, and the said Reed & Bryson, both of whom are residents of Shelby County, in the State of Tennessee, be made parties defendant, by due process and publication, to this bill, and required to answer each and every allegation thereof as fully and minutely as if the same were repeated by special interrogatories; and on the final hearing he prays that his said notes be delivered up and cancelled, and defendants perpetually enjoined from selling, transferring, endorsing, or collecting said notes, or
13 any one of them, or any part of any one of them, and that he

may have a decree against said Andrews for the value of his said furniture, and the damages sustained by compl't as aforesaid.

In the mean time may it please your hon. to issue an injunction, enjoining said Andrews & Reed & Bryson from endorsing, selling, transferring, or collecting said notes, until the final hearing of this cause. Compl't further prays for such other and general relief as may to your hon. seem meet and proper in the premises, and in accordance with the rules and principles of a court of equity.

And as in duty bound he will ever pray, &c.

This is the first application for an injunction in this case.

POSTON, HUMES & SCOTT,
*Sol's for Compl't.*

14 STATE OF TENNESSEE,
*District of West Tennessee, County of Shelby:*

Personally appeared before me, this day, Stephen M. Jones, the compl't in the foregoing bill, and made oath in due form of law, that the facts therein set forth as of his own knowledge, are true, and those on information and belief he believes to be true.

S. M. JONES.

Sworn to and subscribed before me this 18th day of May, 1866.
ISAAC MORRISON, *U. S. Com'r.*

*Fiat.*

To the clerk of the United States circuit court, for the western district of Tennessee:

Let writs of injunction issue as prayed for, upon the compl't giving bond and security in the penalty of $2,000^{00}$, conditioned for the payment of costs and damages.

CONNALLY F. TRIGG,
*U. S. Dist. Judge, &c.*

MAY 26, '66.

15 "*Exhibit A.*"

[Copy.]

This indenture of lease, made and entered into this 29th day of December, A. D. 1858, by and between Joseph J. Andrews, of the one part, and P. Reed and H. W. Bryson, of the other part, witnesseth: That the said Joseph J. Andrews do hereby lease to said parties of the second part, for the term of five years from the first day of January, 1859, until the first day of January, 1864, the Commercial Hotel in the city of Memphis, and the third & fourth stories of the new building over the three stores fronting on Front Row; and the said Andrews on his part agrees that, if any of the furniture now in the said hotel shall be taken out by D. Cockerell, or any other person authorized by him, the same is to be valued by two dissinterested persons to be selected by the parties, and if they cannot agree they may select an umpire; the judgment and value set upon said property (when so taken out) by any two shall be
16 binding upon the parties to these presents, and after ascertaining in this way the value of said old furniture so taken, the said Andrews agrees to expend and lay out the worth thereof, or a like sum, in the purchase of other furniture, to be put in said Commercial Hotel. And the said Andrews further agrees that should said hotel be destroyed by fire during this lease, and the same shall not be caused by the negligence or carelessness of the parties of the second part, or either

of them, or their agents, then, and in that case, the said parties of the second part is to pay rent up to the time such loss may occur, and the said party of the first part is to deliver to said party of the second part such notes as may be falling due after said loss and for which no consideration is received by the said party of the second part. And the further Andrews further agrees that whatever furniture may be in said hotel belonging to him at the end of this lease, shall become the property of the parties of the second part; provided, the notes hereinafter mentioned shall be punctually paid, and the hotel kept in good order from roof to cellar.

For and in consideration of which the said parties of the second part have this day executed to the party of the first part or order their joint and several notes or bonds, payable at the branch of the Planters' Bank of Tennessee, at Memphis, in the following sums, & falling due at the following times, to wit:

Five hundred dollars payable on or before the first day of February, 1859, and the like sum payable on the first of each and every month thereafter, until the first day of January, 1861; the sum of six hundred and twenty-five dollars on or before the first day of February, 1861, & the like sum payable on the first day of each and every month thereafter, until the expiration of this lease; and the said second parties further agree to finish off, in a good, substantial manner, into rooms suitable for a hotel, during the first two years of this lease, the third and fourth stories in the new building hereinbefore referred to, which shall not be removed or taken away, but [which shall not be removed nor taken away, but] which shall enure to the benefit of the said party of the first part; and the said parties of the second part further agree to keep said hotel in good repair during said terms, and, at the expiration thereof, to deliver the same up to the said party of the first part in good repairs; and the second parties further agree not to rent out or sublet the bar in the said hotel without the written consent of the said party of the first part, nor shall the said parties of the second part, at any time during this lease, rent out or sublet said hotel or any part thereof, except the barber shop and the newspaper and cigar stand, without the written consent of the said party of the first part, and in case of failure of the said parties of the second part to meet the payment of the notes or bonds hereinbefore mentioned, or either of them, at maturity, the said party of the first part at his option may immediately take possession of said hotel, furniture, &c., and declare the lease forfeited without demand and notice, but, in case of the sickness or indisposition of the second party, at the time any of the said notes may fall due, the party of the first part shall not for ten days thereafter enforce the forfeiture here served to said party of the first part; and it is further understood that the present wash-house is included in this lease as an appurtenant to Commercial Hotel, which said party of second party may use or rent for some respectable purpose, & they, the second party, have the privilege of altering the kitchen or making such improvement thereto as they may think proper, not to the injury of the hotel.

In testimony whereof, we have hereunto set our hands and affixed our seals in duplicate this day & date first above written.

(Signed) JOS. J. ANDREWS. [SEAL.]
P. REED. [SEAL.]
H. W. BRYSON. [SEAL.]

Witnesses present:
H. VOLLENTINE.
R. H. JOHNSTON.

A true & litteral copy: D. H. POSTON.

20 *Injunction bond.—Filed 7th June*, 1866.

UNITED STATES OF AMERICA, *District of West Tennessee:*

We, Stephen M. Jones & Albert M. Stoddard, acknowledge ourselves indebted to Joseph J. Andrews, P. Reed, & H. W. Bryson in the sum of two thousand dollars.

The condition of this obligation is such that whereas the said Stephen M. Jones has filed his bill of complaint in the United States circuit court for the district aforesaid, against the said Joseph J. Andrews, P. Reed, & H. W. Bryson, and has obtained an injunction therein:

Now, if the said Stephen M. Jones shall pay all costs and damages that may be recovered against him in consequence of the suing out of said injunction, and shall abide by and perform the order, sentence,
21 or decree of said court in said cause, then this obligation to be void; otherwise to remain in full force and effect.

Witness our hands & seals this 29th day of May, 1866.

STEPHEN M. JONES, [SEAL.]
By POSTON, HUMES & SCOTT.
A. M. STODDARD. [SEAL.]

22 *Summons.*

And thereupon, afterwards, on the 7th day of June, 1866, the following writ of summons was issued in this cause, to wit:

The President of the United States to the marshall of the district of West Tennessee, greeting:

You are hereby commanded to summons Joseph J. Andrews, P. Reed, & H. W. Bryson, citizens of the State of Tennessee, if they be found within your district, to appear before the judge of the circuit court of the United States, in the sixth circuit for the district of West Tennessee, at Memphis, on the first Monday in September next, and then and there to answer, plead, or demur to the bill of complaint of Stephen M. Jones filed against them in said court, and to do further & receive what said court shall order and decree in the premises.

Herein fail not, and have you then and there this writ.

23 Witness Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first Monday in March, in the year 1866, and of the independence of the United States the 90th.

A. S. MITCHELL, *Clerk*,
ISAAC MORRISON,
*D. C. of said Court.*

Which writ of summons was afterwards returned into our said court with the following response thereon endorsed, to wit:

Came to hand; same day issued and executed on P. Reed & H. W. Bryson by giving each a copy of the within.

June 8th, 1866.

M. T. RYDER, *Marshal.*

And upon the aforesaid 7th day of June, 1868, a writ of injunction was issued in said cause, which said writ with the return thereon endorsed are in the words and figures following, to wit:

24 "*Injunction.*"

The President of the United States of America to the marshal of the district of West Tennessee, greeting:

Whereas Stephen M. Jones has filed his bill of complaint in the circuit court of the United States for the district aforesaid, against Joseph

J. Andrews, P. Reed, & H. W. Bryson, praying, among other things, that said defendants be enjoined from endorsing, selling, transferring, or collecting the several notes of said complainant executed, on the 1st day of Sept'r, 1859, to Reed & Bryson for the same amounts, and due at the same times, with the notes of Reed & Bryson to said Andrews, falling due after that date, until the further order of said court, and has obtained the fiat of the Hon. Connally F. Trigg, United States district judge, directing injunction to issue according to the prayer of said bill:

You will therefore notify said Joseph J. Andrews, P. Reed, and H. W. Bryson at once and entirely to desist from endorsing, selling, transferring, or collecting said notes until the further order of the
25 court in the premises, under the pains & penalties prescribed by law. And how you shall have executed this writ, do you make due and legal return at the next term of said court, at the federal court-room in the city of Memphis, on the first Monday in September next.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the first Monday in March, 1866, and of independence the 90 year.

[SEAL.]

A. S. MITCHELL, *Clerk.*
ISAAC MORRISON, *Dep'ty Clk.*

*Return.*

Came to hand 7th day of June, 1866, and executed on P. Reed & H. W. Bryson, by making known the contents of the within.

M. T. RYDER, *Marshal.*

MEMPHIS, *June* 8, 1866.

26 *Motion of defendant Andrews to dismiss for want of jurisdiction.—Filed August 23rd, 1866.*

In the circuit court of the United States for the district of West Tennessee.—September term, 1866.

STEPHEN M. JONES
*vs.*
JOSEPH J. ANDREWS ET ALS.

The defendant Joseph J. Andrews comes and moves the court here to dismiss the bill of the plaintiff for want of jurisdiction, apparent on the face of it; and for causes for such motion shows—

(1.) The bill does not aver the citizenship of the plaintiff, nor does it show such facts in regard to the citizenship or residence of the defendants as gives the court jurisdiction.

(2.) The plaintiff shows by his bill that he has an adequate remedy at law.

(3.) The claim set up by the plaintiff in his bill is for damages
27 for forts and trespasses, and cannot in law or in equity be set off against such recovery as this defendant may obtain against him on the proceeding by garnishment.

(4.) The plaintiff admits he is legally and justly liable on the notes he gave the defendants Reed and Bryson, but has not suffered judgment thereon, and does not offer to suffer judgment thereon in the proceeding by garnishment on the law side of this court.

Wherefore, &c.

KORTRECHT & CRAFT,
HERRON, RANDOLPH & LEHMAN,
*For Def't Andrews.*

28 And thereupon afterwards, to wit, at the September term, 1866, of said court, & upon the 18th day of said month, the following order was made in said cause:

S. M. JONES
*v.*
READ & BRYSON & JOS. J. ANDREWS. } In equity.

This cause coming on to be heard before the Honorable Connally F. Trigg, judge, &c., presiding in the circuit court, and on the equity side of said court, this 18th day of September, 1866, upon the bill and motion of Joseph J. Andrews to dismiss; and the court being of the opinion that there is equity in the bill, and that the motion to dismiss for want of equity apparent on the face of the bill operates as an appearance so as to preclude the defendant Andrews from insisting upon his personal privilege as a resident of the State of New York, and a non-resident of the State of Tennessee. The court is therefore pleased to order
29 that said motion be overruled, and the defendants required to plead or answer; and on application of defendants they have ten days to file their pleas or answers.

And thereupon defendant Andrews excepts to so much of said opinion and order of the court as precludes him from filing a demurrer, and requires him to answer or plead; and, on motion of complainant, it is further ordered that the injunction in this cause be continued until the further order of this court.

30 *Answer of def't Andrews.—Filed Sept'r 20th*, 1866.

In chancery.—In the circuit court of the United States for the district of West Tennessee, September term, 1866.

The separate answer of Joseph J. Andrews, one of the defendants, to the bill herein exhibited against him and others by Stephen M. Jones.

This respondent saving and reserving all just exceptions arising on the matters of the plaintiff's bill, nevertheless for answer thereto says: That it is true this respondent, at the March term, 1866, of this honorable court, recovered a judgment against his co-defendants, Reed
31 & Bryson, for the sum of five thousand seven hundred and fourteen dollars and ninety-nine cents ($5,714 99), and costs of suit, amounting to the sum of , and that the s'd judgment yet remains in full force, unappealed from, and unsatisfied.

This respondent admits, also, that he caused a writ of fieri facias execution to issue on the said judgment, returnable to the September term, A. D. 1866, of this court; and that the said execution came to the hands of the marshal for the district aforesaid, and that, in execution of the same, the s'd marshal, by the direction of this respondent, duly served the plaintiff with a writ of garnishment requiring him to appear and answer at the September term, 1866, of this court, in what sum he is indebted to the s'd Reed and Bryson, or what effects of theirs he has in his hands.

And this respondent here refers to the said judgment, execu-
32 tion, and garnishment of record on the law side of this court as a part of this his answer for more particularity and certainty in regard to the matters aforesaid.

This respondent also admits that the notes for which the said judgments was rendered were given for the rent of the Commercial Hotel in Memphis, Tennessee, which was leased by this respondent to his co-defendants, Reed and Bryson, for the term of five (5) years from the first day of January, 1859.

In this respondent refers to the lease mentioned in the bill as Exhibit "A" thereto, and prays that the same may be considered as a part of this his answer.

This respondent admits that his co-defendants, Reed and Bryson, occupied the said Commercial Hotel from the date of their lease
33 aforesaid, up to the 10th day of Sept., 1859, sublet the said hotel for the unexpired term of their said lease to the plaintiff at the same rent that they were paying this respondent, and that the plaintiff at the time executed to the said Reed and Bryson his notes corresponding to the undue and unpaid notes given this respondent by the said Reed and Bryson, as appears by the said lease.

And this respondent prays that the plaintiff be required to produce the lease made him by Reed and Bryson, and when produced this respondent asks that the same may be considered as a part of this his answer.

This respondent, answering further, says that it is not true that the plaintiff paid the defendants Reed and Bryson about six thousand dollars for the furniture with which they had refitted the s'd hotel.
34 On the contrary, as this respondent has been informed and avers, the said plaintiff paid the said Reed and Bryson altogether only about fifty-six hundred dollars, and of this sum between twenty-five hundred and three thousand dollars were paid for certain improvements put by the said Reed and Bryson on the said hotel, for which the plaintiff agreed to pay them.

The intimation in the bill that there was only a remnant of old furniture in the hotel when it was leased by this respondent to Reed and Bryson is entirely false; the truth is, that the hotel was completely furnished when the said lease was made.

It is not true that the furniture in the said hotel was to become the property of the defendants Reed and Bryson, as is stated in the bill, but the stipulation to that effect in the lease, as may be seen by reference thereto, was & is upon this condition, viz: that the notes
35 given by the said Reed & Brison for the rent of the said hotel should be punctually paid, and the hotel kept in good order from the roof to the cellar; and this respondent avers that the said notes were not punctually paid, nor have they been paid at all, except as is hereinbefore stated, and the judgment hereinbefore mentioned was rendered on some of the s'd notes.

And this respondent avers that in consequence of the fact last aforesaid, the said furniture never did become the property of the said Reed and Bryson, but remained the property of this respondent.

It is false that this respondent ever accepted the plaintiff as his tenant—he expressly declined to do so—and he never did receive the notes made by the plaintiff to Reed and Bryson, nor did he ever receive of the said plaintiff payment of his said notes; the truth is that the
36 defendants Reed and Bryson deposited the notes given them by the plaintiff in the same bank in which their notes to this respondent were deposited for collection, and as the notes of the plaintiff to Reed and Bryson fell due, and were paid, the proceeds of the same were applied to the payment of the notes of Reed and Bryson to this respondent, corresponding in amount; this was done by direction of the defendants Reed and Bryson.

This respondent admits that he was in Memphis once in the fall of 1861, and boarded in the hotel kept by the plaintiff.

The plaintiff did not pay any of his notes to Reed and Bryson maturing after the first day of January, 1862, and the corresponding notes of

the said Reed & Bryson to this respondent were not paid. But
37 this respondent avers and believes that the plaintiff was fully able to pay the said notes, and that his refusal to do so was based upon the fact that this respondent was a citizen of the United States, residing in the State of New York, and would receive the benefit of such payments as he might make; and this respondent further avers that the plaintiff not only refused to pay his said notes for the reason aforesaid, but he also attempted repeatedly to induce the other tenants of this respondent to decline paying him on the ground that he was an alien enemy to the so-called "Confederate States of America," and his property liable to confiscation under the pretended laws thereof.

This respondent knows nothing of the effect of the rebellion upon the plaintiff, nor how, nor whether his clerks, sons, and negroes, or
38 any of them were taken away from him, nor for what purpose.

This respondent admits that a fire occurred in the early part of the year 1862, which burned the kitchen belonging to the hotel and did other injury, but what amount of furniture was destroyed, or what particular furniture was destroyed, this respondent is not able to state. But this respondent says that, although he was under no obligation to do so, yet in consideration of the loss incident to the fire, he surrendered the note given him by the defendants Reed and Bryson, falling due on the 1st of April, 1862, and he has been informed and avers that the corresponding note of the plaintiff to Reed and Bryson was likewise surrendered by them to him.

This respondent is informed & avers that the plaintiff attached himself to the fortunes of the rebellion, and that he went south sev-
39 eral months before the occupation of Memphis by the forces of the government, abandoning the said hotel to his son or some other irresponsible person, and that he never after returned to Memphis until the spring of the present year.

This respondent knows nothing of the arrangement made by the plaintiff with Dr. Hazzard & wife to stay in the hotel, and assist the plaintiff's wife in taking care of the property.

This respondent avers that no rent was paid him for the said hotel after the note falling due on the first day of Dec., 1861, and no provision was made for the payment of such rent, either by the plaintiff, by the said Reed and Bryson, or by any other person; and under the
40 circumstances, and the plaintiff being absent aiding the rebellion against the government, or seeking to make a fortune by speculation, this respondent did, about the 12th day of August, 1862, through his agent Samuel T. Morgan, take possession of the said hotel, and compel the persons in occupation of the same to leave it.

This respondent says that it is entirely untrue that he took possession of any furniture belonging to the plaintiff, or that his said agent did so; and he denies that the plaintiff had any furniture of any consequence in the said hotel, even before it was taken possession of by the plaintiff's said agent, as aforesaid; and whatever he had there, if he had any, his wife and son took away and sold, and appropriated to their own use, as they did, also, a large amount of the furniture belonging to the said hotel, and the property of this respondent, and for which
41 neither they, nor the plaintiff, nor any other person, have ever accounted to this respondent.

This respondent knows nothing of the plaintiff's having bought bar-room furniture, including bar-room mirrors, ware, &c., shortly before he left; and, if he did so, the same never were taken possession of by this respondent, or his said agent.

This respondent did lease the hotel to another party, after he so got possession of it; and such party occupied 'til about the 15th day of March, 1863, when it was seized under the authority of the government of the United States for a naval hospital. This respondent has, and will produce on the hearing, inventories of all the furniture that came to the possession of him, or his said agent, when he so took pos-
42 session of the said hotel; but no part of such furniture belonged to the plaintiff; and this respondent did sell the furniture that so came to his possession, and appropriate the proceeds to his own use, except such as was taken by the government of the United States for use in the said hospital.

This respondent denies that the plaintiff was damaged by haveing his family put out of the said hotel; and, if he was, this court has no jurisdiction of such damages.

This respondent is making no effort to collect the residue by the plaintiff to the defendants Reed and Bryson, except only that he has caused a garnishment to be served upon the plaintiff, as the debtor of Reed and Bryson, as is stated in the bill. What his co-defendants have done in his behalf he does not know.

43 This respondent denies that he is in any way or manner indebted to the plaintiff, or that the plaintiff has any just claim whatever against him.

This respondent never did procure the plaintiff's notes out of bank, and deliver them to his co-defendants. The said notes were in a private box belonging to this respondent, in which he kept his valuable papers, deposited by him in the bank; and, having no claim upon them, at the request of his co-defendant Reed, he delivered them to him. This respondent supposes the said notes were put in the said box by some arrangement between the plaintiff & the bank, or the plaintiff & the co-defendants of this respondent.

This respondent again denies that he has any claim to the notes of the plaintiff to Reed and Bryson; but avers that the notes of
44 Reed and Bryson to him, upon which he obtained his judgment aforesaid, were justly due him, and were not subject to any defence whatever.

This respondent denies all fraud and collusion with which he is charged, and avers that he has acted in good faith in all he has done in the premises.

This respondent is not fully informed, and is not able to answer to the solvency of the plaintiff, or the solvency of the defendants Reed and Bryson.

This respondent is altogether ignorant of any efforts made by the defendants Reed and Bryson, to induce the plaintiff to pay a portion of his notes.

And this respondent denies all & singular the allegations of the foregoing bill not already hereinbefore fully denied or otherwise answered.

45 And this respondent says that there is no equity on the face of the plaintiff's bill, and demurs thereto for want thereof; and craves the same benefit of this, his demurrer, as if it had been formally interposed, &c.

And having fully answered, this respondent prays to be hence dismissed, with his costs, &c.

HERRON, RANDOLPH & LEHMAN,
& KORTRECHT & CRAFT,
*Sol's for Defendant Jos. J. Andrews.*

UNITED STATES OF AMERICA,
*State, City, & County of New York:*

I, Joseph Andrews, respondent in the foregoing answer, swear that the matters stated in the same, as to my own knowledge, are
46 true, and that such as are stated from information I believe to be true.

So help me God.

JOS. J. ANDREWS.

Subscribed & sworn to before me this first day of August, 1866.
J. B. NOWES, [SEAL.]
*Comm'r of Tennessee in New York.*

47 *Answer of P. Reed.—Filed January 16th, 1867.*

In chancery.—In the circuit court of the United States for the district of West Tennessee.—September term, 1866.

The separate answer of Pinkney Reed, one of the defendants, to the bill herein exhibited against him and others by Stephen Jones.

This respondent, saving and reserving all just exceptions arising on the matters of the plaintiff's bill, nevertheless, for answer thereto, says:

That he has read the answer of his co-defendant Joseph J. Andrews, heretofore made and now on file in this cause, and he asserts & adopts the same as the answer of this respondent in every particular, and as in all respects true, from the beginning of said answer down to and
48 inclusive of the sentence which reads as follows, to wit:

"This respondent knows nothing of the arrangement made by the plaintiff with Dr. Hazzard & wife to stay in the hotel & assist the plaintiff's wife in taking care of the property."

Further answering, this respondent says that he knows nothing as to how and when his co-defendant Andrews took or came into possession of said hotel & property, nor as to what furniture of any kind, whether hotel or bar-room, was in said hotel after the same went into possession of complainant. So far as this respondent knows, complainant never had any furniture in said hotel, except that which belonged to said Joseph J. Andrews.

This respondent does not know how the complainant's notes went into the hands of the agent of his co-defendant Andrews, out of bank.

The said notes were by this respondent, as one of the firm of
49 Reed & Bryson, deposited in the Planters' Bank in the city of Memphis, Tennessee, for collection, and were by the said bank placed to the credit of Reed & Bryson, as will appear by the bank books of Reed & Bryson, given them by said bank, and now in possession of this respondent, and also, respondent supposes, by the books of said bank. Respondent went to said bank to retake possession of said notes, and was by the bank told that when the assets of the bank were sent south during the late war, said notes had been placed in a box with papers belonging to said Andrews.

Respondent called on Sam'l T. Morgan, the agent of Mr. Andrews, and received from him said notes. Said Andrews had no claim whatever upon said notes; nor has he now so far as respondent knows. They were never transferred to said Andrews so far as respondent knows, & were never placed in the possession of any person for the benefit in any way of said Andrews.

50 Respondent states that before the sueing out of the garnishment by said Andrews against complainant mentioned in his bill of complaint, some time in spring time of the year 1866, as well as respondent remembers, the said notes of complainant were by Reed & Bryson transferred and delivered to other parties, and said notes are not, nor either of them, in the possession of said Reed & Bryson, nor were they at the time of the institution of proceedings in this cause, nor were they, or either of them, then or now the property of Reed & Bryson.

The said complainant justly owed said notes, and said notes were subject to no offsets, nor to any defence whatever, so far as Reed and Bryson are concerned.

Respondent denies that, so far as he knows, and certainly so far as he is concerned, either he or his co-defendants ever endeavored to
51 enveigle complainant into paying any part of said notes so as to fix his liability, and to release the said Andrews from liability.

Respondent never doubted complainant's liability to pay the entire amount of the said notes.

Respondent denies all fraudulent collusion with said Andrews, and is advised & doubts not that said Andrews is amply able to pay complainant any damages due from him to complainant, as he owns a large amount of property subject to execution in the said city of Memphis.

And this respondent says that there is no equity on the face of complainant's bill, & demurs thereto for want thereof, & craves the same benefit thereof as if the same were herein formally pleaded.

And, having fully answered, prays to be hence dismissed with his costs in this behalf expended.

PACKAM & WILLIAMSON,
*Sol's for Def't Reed.*

52 STATE OF TENNESSEE, *Shelby County:*

Pinkney Reed personally appeared before me and made oath that the statements made in the foregoing answer are true to the best of his knowledge and belief.

P. REED.

Subscribed & sworn to before me this 9th day of January, 1867.
WM. S. WALTON, *J. P.*

53 *Cross-bill of Joseph J. Andrews.*

To the judges of the circuit court of the United States for the district of West Tennessee:

Joseph J. Andrews, a citizen of the State of New York, brings this his cross-bill against Stephen M. Jones, in the case now pending in this court, on the equity side thereof, in favor of said Jones, and against said Andrews and others.

And thereupon your orator complains and says that said Stephen M. Jones filed his original injunction bill on the day of June, 1866, against your orator and others, in which he prayed for and obtained an injunction enjoining and restraining your orator and his co-defend-
54 ants therein, P. Reed and H. W. Bryson, from selling, transferring, or collecting certain notes on said Jones in said bill described, upon the grounds stated in the bill, and which suit is still pending, and injunction in full force.

Your orator had previously recovered a judgement in this court against said Reed and Bryson for over $5,000, and execution thereon

had been duly issued and notice or process of garnishment had thereupon been served upon said Jones to answer as to his indebtedness to said Reed and Bryson, and thereupon he filed said bill, enjoining further proceedings on said garnishment, upon the grounds in said bill stated.

Your orator, by way of cross-bill in said cause, now states that said
S. M. Jones was, at the time of said garnishment, and still is, in-
55 debted to said Reed and Bryson an amount equal to or exceeding
the recovery of your orator aforesaid against them; which recovery is still wholly unpaid. It will be seen from the bill of said Jones, and the answers therein, that the debt of Reed & Bryson to your orator arose upon the renting of a hotel in Memphis to them, for five years from the first day of January, 1859; and the debt of said Jones to them arose upon the underletting said hotel to him from same time in Sept'r, 1859, for the balance of the term; and said Jones claims to be relieved from being compelled to pay his indebtedness to your orator upon the pretence of demands in his own favor against your orator, and upon other grounds and pretences fully disclosed and stated in his said bill.

Now your orator, without admitting any of the charges of said
56 Jones' bill to be true, except as they are admitted by your orator's
answer in the cause, by way of cross-bill in said cause, charges and states that said Jones is not only liable to him, as garnishee, for the amount of his said judgement, with interest and costs, but he is also indebted and liable to your orator for other large sums, some of which are as follows:

He owes and is indebted to your orator for the rent of sundry additional rooms, fitted up and rented by your orator direct to said Jones after said Jones had rented the balance of the hotel from Reed and Bryson, to wit: Seventy dollars per month from January 1st, 1862, to the 12 day of August, 1862 (when the whole hotel was abandoned to your orator by said Jones), to wit, the sum of five hundred dollars,
besides interest; and also in the sum of about ten thousand dol-
57 lars for furniture of your orator's, which was in said hotel, and
which was by said Jones taken therefrom, and converted to his own use; and in like sum for furniture sold & delivered by your orator to said Jones; and in like sum of ten thousand dollars for the rent of the said hotel from January 1st to August 12, 1862, and for wear and tear of the same, and for damages to the building and reputation of said hotel by rough usage, and by neglect to repair, and by failing to keep a good, prosperous, and popular hotel, and by abandoning the hotel, and ceasing to keep the same for nearly two years of his lease thereof, whereby your orator sufferred great loss, damages, and injury.

All of which debts and liabilities are still unpaid.

58 Wherefore your orator prays that this may be filed as a cross-
bill in said cause, that said Jones be made defendant hereto, & s'p'a'd, &c., & answer, &c., and may all needful accounts be taken; and on final hearing may said Jones be charged with and compelled to pay all his said debts and liabilities, to your orator, and for other & further relief, &c.

AYERS & RANDOLPH,
& KORTRECHT & CRAFT,
*Sol'rs for Compl't.*

The defendant Jones agrees to the filing of this cross-bill this day, and waives issuance of process, and acknowledges service of process, and will answer the same forthwith.

HUMES & POSTON.
*Sol'rs for Jones.*

JULY 27, 1867.

59 *Answer of compl't to cross-bill.—Filed August 8th, 1867.*

The answer of S. M. Jones to the cross-bill of Joseph T. Andrews, filed in the circuit court of the United States at Memphis, vs. this resp't.

Respondent, making the usual reservation for answer to said cross-bill, says he admits the filing of the original injunction bill in this court for the purpose alleged in the cross-bill; and that compl't Andrews had obtained in this court, against Reed & Bryson, a judgment for over $5,000^{00}$; he also admits the issueance of execution thereon; and also, that a writ of garnishement thereon was served on this respondent, to answer as to his indebtedness to Reed & Bryson, and, further, that one among other objects of resp't's bill, was to enjoin further proceedings on said garnishment. Respondent further states to your honor, that
60 he answered said writ of garnishment denying then, as he does now, any indebtedness on his part to Reed & Bryson, or to Andrews. Resp't refers to his answer to said garnishment, and adopts its statements, and prays that the same may be taken as a part of this answer. Resp't denies that he was indebted at the time of the issueance & service of said garnishment, or has been since, or is now, to said Reed & Bryson, an amount equal to or exceeding the recovery aforesaid of Andrews against them, or in any sum or amount, however small. It is true Andrews leased the Commercial Hotel to Reed & Bryson for a term of five years from the 1st day of January, 1859, and they their notes to him for the rent, payable monthly; but it is untrue that Reed & Bryson owed the amount of said judgment, on account of rent due to Andrews. It is likewise untrue that resp't is indebted to them upon any underletting by them to him. In Sept., 1859, they assigned the unexpired por-
61 tion of their term to resp't, and, by the method shown in his original bill, assume the payment of the rent as it fell due, to Andrews and did pay it to Andrews, through the Planters' Bank, up to January, 1862. Indeed, in October, 1861, he paid to Andrews two thousand dollars unpaid rent, by a check drawn by resp't, in favor of Andrews, for some $1,476^{00}$ on the Planters' Bank, and the balance in cash. This appears by the check which will be produced in evidence before the hearing.

Respondent, further answering, says he is not indebted to said Andrews as garnishee, nor otherwise. Resp't denies that he is indebted to Andrews for the rent of sundry additional rooms. Resp't admits that after the assignment by Reed & Bryson to him, compl't Andrews did treat with this resp't as his tenant, and lease to him nine or ten additional rooms belong-
to the Commercial Hotel, for the balance of the term, in consid-
62 eration for which, the resp't gave up to him a small building attached to the hotel as a wash-room, and agreed to pay him seventy dollars per month in addition to the rent he was then paying him. This agreement was made between compl't Andrews, as landlord, and respondent Jones, as his tenant, & without the knowledge or consent of Reed & Bryson. It is untrue that resp't abandoned the hotel in August, 1862, to compl't. It is true that resp't did not pay the rents, notes, commencing from February, 1862, to the date of the expiration of the lease, except the note of April, 1862, which by mistake was paid as the Feb'uary note, 1862. Resp't would show your hon. that he is not indebted to said Andrews for the rent of said hotel from Feb'uary, 1862, to the 12th of August, 1862, for the follow reasons: A civil war was then raging in Tennessee and other southern States. These States had united under the name of the Confederate States of America, for the purpose of overthrowing the
63 authority the government of the United States, and the States so in rebellion as aforesaid. The authority of the United States for the

time being had been overthrown in the State of Tennessee, and a large portion of the territory of the State of Tennessee was then in the occupation and under the control of the military authorities of the rebellious authority of the Confederate States, & this occupation and control included Memphis and other portions of West Tennessee. As a consequence of this civil war, business was destroyed in Memphis, and all travel except for military purposes, thus annihilating the business of hotel-keeping in Memphis, & rendering it impracticable to make the usual and, indeed, any profits by the keeping of a hotel in Memphis. Resp't's negro hands were, during this period, frequently pressed by the confederate authority & put to work on fortification, and his own sons, two in number, & other clerks, with one exception, forced into the con-
64 federate army. In addition to this the confederate government had issued a species of treasury notes, which went into circulation in the summer & fall of 1861, and which, by the month of Febuary, 1862, had in the city of Memphis driven out all other currency, whether gold, silver, & bank notes, and had become the only circulating medium & means of exchange in the city. Hotel bills for board, and all other indebtedness, were paid alone in this confederate currency, and nothing else was paid out by the banks or checks. In addition to this, currency rapidly depreciated, and supplies became scarce and high. There was scarcely any travel except soldiers, many of whom could not pay anything, and those who could paid in this depreciated and worthless currency. Therefore it was impossible, by reason of these insurmountable obstacles, produced by the civil war and rebellion, for respondent
65 to make a dollar by keeping said hotel, from Feb'uary, 1862, to August, 1862, & hence he did not and could not pay his rent. But it is utterly untrue that resp't abandoned the hotel in August, 1862, or at any other time. In May, 1862, resp't, who was then the owner of a large number of valuable slaves, not being able to use them with profit in Memphis, took them to the planting districts of the Gulf States, where he thought they would be more profitable, as being further removed from the scene of the war. Resp't went with them in person, intending, as soon as he could make a safe and profitable arrangement with them, to return to Memphis. Before he could do this, however, on the 6th of June, 1862, the United State military authorities took possession of Memphis & closed the communication with the South, & it thus became impossible for respondent to return to Memphis as he had contemplated & intended. Resp't before leaving Memphis, had made temporary
66 arrangements for Dr. Hazzard & wife to aid his other employees in taking care of the hotel during his absence. During respondent's absence in August, 1862, as resp't is informed & believes, one Samuel T. Morgan, acting as the agent of compl't Andrews, went to the hotel and peremptorily ordered respondent's wife and family to vacate the hotel, and ejected them & resp't's employees therefrom, & took immediate possession of the hotel, as forfeited under the lease by non-payment of the rent. Resp't is also informed & believes that said Morgan took possession of the furniture in the hotel as the property of Andrews, &, under the instructions of Andrews, converted it to his use, wrongfully and against the rights of resp't, who was the legal owner thereof.

Respondent would further show your honor that there was at the time of the lease from Andrews to Reed & Bryson, in January, 1859, in
67 the hotel, a remnant of old furniture, as resp't is informed and believes, some 12 or more years old, which, by the terms of the lease, Andrews transferred to Reed & Bryson, reserving, as resp't is advised, according to the legal effect of the lease, a lien to secure the payment of

the rent and proper repairs to the hotel. This furniture was a mere remnant and not worth more than $500^{00}$, as it was shown to resp't when he took the hotel.

When resp't took the hotel from Reed & Bryson, they had added some $5,000^{00}$, worth of furniture, and respondent paid them therefor some $5,600, in a negro boy at $1,400^{00}$, & balance in cash. This was done with the knowledge and assent of S. T. Morgan as the agent of Andrews.

After resp't took charge of the hotel he added over $15,000^{00}$ worth of furniture to that then in the hotel, including a valuable bar-room, fixtures, & furniture, valuable safe, &c.

All this furniture both Morgan and Andrews knew was respond-
68 ent's on the 12th day of August, 1862, was in the Commercial Hotel, and yet, notwithstanding this knowledge on their part, said Morgan, with and under the instructions of said Andrews, did wrongfully seize said property as the property of Andrews, & wrongfully converted it to said Andrews' use, by then and there having it inventoried as the property of said Andrews, and putting it into the case of A. M. Stoddard, and then leasing it, with the hotel, as the property of said Andrews. Resp't would show your hon. that the amount of his said furniniture which said Andrews thus wrongfully converted did not amount to less than fifteen thousand, & probably over twenty thousand, dollars at the date of said conversion, to wit, the 12th day of August, 1862.

It is utterly false that resp't abandoned said hotel as compl't well
knows. It is utterly false that complainant Andrews had any
69 furniture in the hotel while resp't or his family was there; and it is also utterly untrue that resp't Jones, or any one acting for him, ever took any furniture belonging to said Andrews from said hotel, nor converted the same to his own use, nor did said Andrews ever sell & deliver any furniture to respondent. Resp't also positively denies that he did not take good care of said hotel; he denies that said hotel suffered rough usage at his hands, and he denies that neglected to keep the same in good repair. On the contrary, resp't avers most positively that he did keep said hotel in good repair all the time of his occupation, from Sept., 1859, to August, 1862, from roof to cellar; indeed, resp't, finding many repairs needed throughout the hotel when he took possession, made these repairs complete at a very heavy expense, & kept the entire premises in complete repair while he occupied it, and suffered no
70 injury or waste or deterioration to happen to said premises or any part thereof from negligence or want of repairs. Resp't also adopts the allegations of his original injunction bill in this cause as true & as a part of this his answer, and prays that the same may be so regarded & considered by the court; and now, having fully answered, he prays to be hence dismissed with his reasonable costs, &c.

HUMES & POSTON,
*Sol'rs for Resp't.*

STATE OF GEORGIA, *Richmond County:*

Personally appeared before me this day S. M. Jones, the respondent in the foregoing answer, and made oath in due form of law that the facts set forth in the foregoing answer as of his own knowledge are true, & those on information he believes to be true.

S. M. JONES.

Sworn to & subscribed before me this 3rd day of August, 1867.

JACOB R. DAVIS,
*United States Commissioner for the Southern District of Georgia.*

time being had been overthrown in the State of Tennessee, and a large portion of the territory of the State of Tennessee was then in the occupation and under the control of the military authorities of the rebellious authority of the Confederate States, & this occupation and control included Memphis and other portions of West Tennessee. As a consequence of this civil war, business was destroyed in Memphis, and all travel except for military purposes, thus annihilating the business of hotel-keeping in Memphis, & rendering it impracticable to make the usual and, indeed, any profits by the keeping of a hotel in Memphis. Resp't's negro hands were, during this period, frequently pressed by the confederate authority & put to work on fortification, and his own sons, two in number, & other clerks, with one exception, forced into the con-
64 federate army. In addition to this the confederate government had issued a species of treasury notes, which went into circulation in the summer & fall of 1861, and which, by the month of Febuary, 1862, had in the city of Memphis driven out all other currency, whether gold, silver, & bank notes, and had become the only circulating medium & means of exchange in the city. Hotel bills for board, and all other indebtedness, were paid alone in this confederate currency, and nothing else was paid out by the banks or checks. In addition to this, currency rapidly depreciated, and supplies became scarce and high. There was scarcely any travel except soldiers, many of whom could not pay anything, and those who could paid in this depreciated and worthless currency. Therefore it was impossible, by reason of these insurmountable obstacles, produced by the civil war and rebellion, for respondent
65 to make a dollar by keeping said hotel, from Feb'uary, 1862, to August, 1862, & hence he did not and could not pay his rent. But it is utterly untrue that resp't abandoned the hotel in August, 1862, or at any other time. In May, 1862, resp't, who was then the owner of a large number of valuable slaves, not being able to use them with profit in Memphis, took them to the planting districts of the Gulf States, where he thought they would be more profitable, as being further removed from the scene of the war. Resp't went with them in person, intending, as soon as he could make a safe and profitable arrangement with them, to return to Memphis. Before he could do this, however, on the 6th of June, 1862, the United State military authorities took possession of Memphis & closed the communication with the South, & it thus became impossible for respondent to return to Memphis as he had contemplated & intended. Resp't before leaving Memphis, had made temporary
66 arrangements for Dr. Hazzard & wife to aid his other employees in taking care of the hotel during his absence. During respondent's absence in August, 1862, as resp't is informed & believes, one Samuel T. Morgan, acting as the agent of compl't Andrews, went to the hotel and peremptorily ordered respondent's wife and family to vacate the hotel, and ejected them & resp't's employees therefrom, & took immediate possession of the hotel, as forfeited under the lease by non-payment of the rent. Resp't is also informed & believes that said Morgan took possession of the furniture in the hotel as the property of Andrews, &, under the instructions of Andrews, converted it to his use, wrongfully and against the rights of resp't, who was the legal owner thereof.

Respondent would further show your honor that there was at the time of the lease from Andrews to Reed & Bryson, in January, 1859, in
67 the hotel, a remnant of old furniture, as resp't is informed and believes, some 12 or more years old, which, by the terms of the lease, Andrews transferred to Reed & Bryson, reserving, as resp't is advised, according to the legal effect of the lease, a lien to secure the payment of

the rent and proper repairs to the hotel. This furniture was a mere remnant and not worth more than $500^{00}$, as it was shown to resp't when he took the hotel.

When resp't took the hotel from Reed & Bryson, they had added some $5,000^{00}$, worth of furniture, and respondent paid them therefor some $5,600, in a negro boy at $1,400^{00}$, & balance in cash. This was done with the knowledge and assent of S. T. Morgan as the agent of Andrews.

After resp't took charge of the hotel he added over $15,000^{00}$ worth of furniture to that then in the hotel, including a valuable bar-room, fixtures, & furniture, valuable safe, &c.

All this furniture both Morgan and Andrews knew was respond-
68 ent's on the 12th day of August, 1862, was in the Commercial Hotel, and yet, notwithstanding this knowledge on their part, said Morgan, with and under the instructions of said Andrews, did wrongfully seize said property as the property of Andrews, & wrongfully converted it to said Andrews' use, by then and there having it inventoried as the property of said Andrews, and putting it into the case of A. M. Stoddard, and then leasing it, with the hotel, as the property of said Andrews. Resp't would show your hon. that the amount of his said furniniture which said Andrews thus wrongfully converted did not amount to less than fifteen thousand, & probably over twenty thousand, dollars at the date of said conversion, to wit, the 12th day of August, 1862.

It is utterly false that resp't abandoned said hotel as compl't well knows. It is utterly false that complainant Andrews had any
69 furniture in the hotel while resp't or his family was there; and it is also utterly untrue that resp't Jones, or any one acting for him, ever took any furniture belonging to said Andrews from said hotel, nor converted the same to his own use, nor did said Andrews ever sell & deliver any furniture to respondent. Resp't also positively denies that he did not take good care of said hotel; he denies that said hotel suffered rough usage at his hands, and he denies that neglected to keep the same in good repair. On the contrary, resp't avers most positively that he did keep said hotel in good repair all the time of his occupation, from Sept., 1859, to August, 1862, from roof to cellar; indeed, resp't, finding many repairs needed throughout the hotel when he took possession, made these repairs complete at a very heavy expense, & kept the entire premises in complete repair while he occupied it, and suffered no
70 injury or waste or deterioration to happen to said premises or any part thereof from negligence or want of repairs. Resp't also adopts the allegations of his original injunction bill in this cause as true & as a part of this his answer, and prays that the same may be so regarded & considered by the court; and now, having fully answered, he prays to be hence dismissed with his reasonable costs, &c.

HUMES & POSTON,
*Sol'rs for Resp't.*

STATE OF GEORGIA, *Richmond County:*

Personally appeared before me this day S. M. Jones, the respondent in the foregoing answer, and made oath in due form of law that the facts set forth in the foregoing answer as of his own knowledge are true, & those on information he believes to be true.

S. M. JONES.

Sworn to & subscribed before me this 3rd day of August, 1867.

JACOB R. DAVIS,
*United States Commissioner for the Southern District of Georgia.*

71 This indenture of lease, made and entered into this 10th day of September, A. D. 1859, by & between P. Reed & Bryson, of the county of Shelby, and State of Tennessee, of the one part, & S. M. & James C. B. Jones, of the county of Davidson and the State aforesaid, of the second part, witnesseth: That whereas the said Reed & Bryson obtained from Joseph J. Andrews, on the 29th day of December, 1858, for the period of five years from the 1st day of January, 1859, a lease on the Commercial Hotel in the city of Memphis, and certain other rights, appurtenances, and privileges specified in a written contract signed by said parties, which lease, & the rights & privileges thereunto belonging & accrueing from this date, the said Reed & Bryson
72 has, this day & by these presents, leased & sublet to the said S. M. & J. C. B. Jones, until the full end & term of the same, by and with the written consent of the said Joseph J. Anderson, through his agent Sam'l T. Morgan.

The property hereby leased, & the terms & conditions on which the same is leased, are as follows,to wit:

The Commercial Hotel in the city of Memphis, and the third and fourth of the new building over the three stories fronting on Front street, together with all the furniture & articles received by the said parties of the first part from said Andrews, and were on hand in said hotel; and the said parties of the first part further agrees that should said hotel be destroyed by fire during this lease, & the same shall not be caused by the negligence or carelesness of the parties of the second part, or either of them, or their agents, then, and in that case, the said par-
73 ties of the second part is to pay rent up to the time such loss may occur; and the said parties of the first part is to deliver to the said parties of the second part such notes as may be falling due after said loss, and for which no consideration is received by the said parties of the second part; and the parties of the first part further agree that whatever furniture may be in said hotel, belonging to them, at the end of this lease, shall become the property of the parties of the second part, provided the notes hereinafter mentioned shall be punctually paid, and the hotel kept in good order from roof to cellar. The wash-house, barber shop, cigar stand, & paper stand, are all under within lease from the parties of the first part; which lease, & the rent accruing therefrom, is hereby transferred to the said parties of the second; and the terms of said lease are to be observed & carried out by the said partys of
74 the second part to this lease. For and in consideration of which, the said parties of the second part has this day paid to the said parties of the first part the sum of fifty-six hundred dollars in cash, & have executed to the said parties of the first part, or order, their joint and several notes or bonds, payable at the branch of the Planters' Bank of Tennessee, at Memphis, in the following sums, & falling due at the following times, to wit: Three hundred & thirty-three $\frac{33}{100}$ dollars payable on or before the first day of October, 1859; five hundred dollars payable on the first day of November, 1859, and the like sum of five hundred dollars payable on the first day of each and every month thereafter, until the first day of January, 1861; the sum of six hundred & twenty-five dollars payable on or before the first day of Feb'uary, 1861; and the like sum of
75 six hundred and twenty-five dollars payable on the first day of each and every month thereafter until the expiration of this lease; and the second parties further agree to keep said hotel in good repair during said term, and at the expiration thereof to deliver the same up to the said parties of the first part, or to Joseph J. Andrews, in good repair; and the second parties further agree not to rent out or sublet the

bar in said hotel without the written consent of the said parties of the first part; nor shall the said parties of the second part at any time during this lease rent out or sublet said hotel, or any part thereof, except the barber shop and the newspapers & cigar stand, without the written consent of the said parties of the first part; and, in case of failure of the said parties of the second part to meet the payment of the notes or bonds hereinbefore mentioned, or either of them,
76 at maturity, the said parties of the first part, at their option, may immediately take possession of said hotel, furniture, &c., and declare this lease forfeited, without demand and notice. But in case of the sickness or indisposition the second parties, at the time any of said notes may fall due, the said parties of the first part shall not, for ten days thereafter, enforce the forfeiture herein reserved to the said partys of the first part. It is further understood that what is known as the wash-house is embraced in this lease as an appurtinent to said hotel, which the parties of the second part may under-rent out for some respectable purpose; and the second parties has the privilege of altering the kitchen, or making such improvements thereto, as they may think proper, not to the injury of said hotel.

In testimony whereof, we have hereunto set our hands and seals,
77 in duplicate, this day & date above written.

It is understood that no furniture is to be taken out of said hotel by said second parties till the full end and term of this lease.

REED & BRYSON. [SEAL.]
STEPHEN M. JONES. [SEAL.]
J. C. B. JONES. [SEAL.]

Witness:

HENRY T. STRATTON.
H. VALLENTINE.
J. H. H., Sept. 10th, '57.

STATE OF TENNESSEE, *County of Shelby:*

Personally appeared before me, John P. Trezevant, clerk of county court of said county, Reed & Bryson, Stephen M. Jones, J. C. B. Jones, the bargainers to the foregoing and hereto attached transfer of lease, with whom I am personally acquainted, & who acknowledges that they executed the same for the purposes therein contained. Witness my hand at office this 10th day of Sept., 1859.

JOHN P. TREZEVANT, *Clerk,*
By JOHN HARRISON, *D. C.*

78 STATE OF TENNESSEE, *Shelby County:*

This transfer of lease was filed in my office for registration on the 14th day of September, 1859, at 9 o'clock a. m., and so noted in note book No. 4, page 139, and was duly recorded on the 27th day of October, 1859.

HENRY LAKE, *Register.*

STATE OF TENNESSEE, *County of Shelby:*

I, Charles W. Johnston, register of said county, do certify the foregoing to be a full, true, and perfect copy of the original deed, from book No. 39, part 2, pages 611, 612, & 613.

Witness my hand and seal of office at office this 17th day of July, A. D. 1867.

C. W. JOHNSTON, *Register,*
J. W. VALENTINE, *D. R.*

79 *Deposition of H. W. Bryson.—Filed 13th July, 1867.*

In equity in the U. S. circuit court for the district of West Tennessee.

STEPHEN M. JONES
*vs.*
JOSEPH J. ANDREWS ET ALS.

The deposition of H. W. Bryson taken by consent before me, this 13th day of July, 1867, the said witness being of lawful age & duly sworn by me.

Deposition of H. W. Bryson taken at office of Humes & Poston, July 12th, 1867, by agreement in above case.

1st ques. Are you one of the firm of Reed & Bryson, defendants in this case?

Ans. I am.

2nd question. Were you present when the contract was made between Reed & Bryson, & S. M. Jones, & S. T. Morgan, as agent for
80 Jos'ph J. Andrews, by which Reed & Bryson assigned their lease of the Commercial Hotel to S. M. Jones? If so, please state your understanding of the agreement, and what disposition was made of the notes made by S. M. Jones for the lease.

Ans. I was present; Jones' notes were taken to Reed & Bryson & put in the bank to lift the notes of Reed & Bryson as they fell due. He obligated himself to pay the rent as it fell due, & take up our notes & turn them over to us. Mr. S. T. Morgan, as agent of Andrews, assented to this agreement for Andrews. Mr. Jones was to fill our contract, by consent of Morgan.

Ques. What was done with the notes?

Ans. They were put in the bank by Reed and Bryson to meet our notes. Mr. Morgan was there when this was done, and had it done.

81 Question. How much furniture did Reed & Bryson put into the hotel after they took possession of it under their lease from Andrews?

Ans. I can't tell; but we were buying every day. When we went into it, the house was in a very bad condition as to furniture; there was no table-ware at all scarcely, and that we had to buy; there was great deficiency of beds and bed clothing, such as, sheets, blankets, comforts. We bought at one time, several hundred yards of carpeting. We had to buy a cooking stove immediately. There was a great deficiency of chairs, & we had to supply. The bedstead were old-fashioned and of very little value; we put out as many as two dozen, & sold them off to negroes & whoever would buy them. I don't know how many, may be more than 2 dozen, & may be not so many. We had to buy wash-stands and tables, and everything necessary to furnish a hotel.

82 Nearly every one of the carpets we put in new, because the others were worn out.

Ques. What did you sell the furniture in the hotel to Jones at, when you sold to him?

Answer. At $5,600\frac{00}{100}$ dollars.

Question. Was the safe in the office included in that sale, or a piano?

Answer. The piano was in the first sale; but there was some dispute about the safe, & I don't think it was, tho' I don't remember certainly.

Question. What has been the pecuniary condition of yourself & Reed ever since the war?

Answer. Both broke flat. Lincoln broke me by freeing all my negroes, & Reed broke himself.

Question. Did you understand, that by the agreement of Jones,
83 he took the contract of lease off of your hands?

Answer. Yes, sir; that was the understanding distinctly, that he took the lease off of our hands & was to fill out the contract.

Question. Did Jones put any new furniture in the hotel after that?

Answer. Yes, sir; a great deal. I have no idea of the am't, but it was considerable; he furnished a great many vacant rooms entirely; some 10 or 11 rooms, which we did not lease, he afterwards got from Andrews & fitted them entirely with new furniture. At the time of our sale to him, we, Reed & Bryson, reserved the furniture in the two rooms occupied by us, & these he also refurnished.

Question. Do you know or can you say the value of the furniture in the hotel, at the time Mr. Morgan ejected Mr. Jones's family?

84 Ans. I can't say with accuracy. The house had some 100 rooms in it, and all were well furnished. May be not quite a hundred.

Question. Did you not call with Mr. Jones on S. T. Morgan, in May, 1866; and, if so, did Morgan admit he then had the inventory of the furniture made by Stoddard?

Ans. Yes, sir; I called with him; he, Morgan, admitted he had it, but did not show it; he showed us an account of the sales. He said he had it or had had it, and went to looking among his papers, & handed us the account of sales.

Cross-examined:

X-int. 1st. Were the notes of Jones to Reed & Bryson made to correspond in amount and time of maturity with the notes which Reed & Bryson had given to Andrews?

85 Answer. Yes, sir; precisely.

X-int. 2. Where were the notes of Reed & Bryson, at the time of the trade with Jones?

Answer. On deposit for collection, in the Planters' Bank.

Int. 3-X. Where did Reed & Bryson deposit Jones's notes, & with what intentions?

Answer. In the same bank; with the intentions that one was to pay the other, that is, that Jones' notes were to pay Reed & Bryson.

X-int. 4. Did Jones pay all his notes?

Answer. I don't think he paid them all; I think he paid up until the war came on; all of Reed's & Bryson's notes were not paid.

X-int. 5. What became of the Reed & Bryson's notes, & the
86 Jones's notes which were not paid?

Answer. The unpaid Reed & Bryson notes were sued on by S. T. Morgan; I don't know what did become of the unpaid Jones' notes. Reed & Morgan, & among them, had them squabling about them; & I don't know where they are now.

X-int. 6. What became of the Reed & Bryson notes which were paid?

Answer. Reed got them up for the bank; I don't know when he got them; but about 12 months ago I got them from Reed and destroyed or defaced them, and left the defaced ones in Reed's posession.

X-int. 7. State just what was said by Mr. Morgan, when you & Mr. Jones called on him in 1866, as you have stated in your answer to the third int., for the inventory made by Stoddard.

Ans. Mr. Jones asked Mr. Morgan for an inventory, which
87 Mr. Stoddard said he had given him, of what was in the house;

and Mr. Morgan said, if Mr. Stoddard had ever given him such an inventory, he could not find it; that the sales-bill were all that he had to show what property was sold, but that he would see Mr. Stoddard about it.

X-int. 8th. How long was it before Morgan took possession of the hotel that you were last in the hotel?

Ans. I can't say exactly when I was in it last before Morgan took it, nor do I recollect certainly when Morgan took it; I may have been in the hotel the very day, & may not have been it for a week or more.

X-int. 9. Were you ever in the hotel, so far as you now remember, after Mr. Jones left Memphis?

88 Answer. I was in it every day off & on I remained in Memphis. I now recollect that I was in the hotel when Morgan took posession, & saw him & Stoddard making an inventory in a book; I went round with them for a while.

Re-examined:

Question. At the time Jones made his notes to Reed & Bryson, did they endorse them; if so, for what purpose?

Answer. They endorsed them over for the purpose of paying our notes. And further saith not. H. W. BRYSON.

UNITED STATES OF AMERICA,
*District of West Tennessee:*

The foregoing deposition was duly sworn to by H. W. Bryson, before me, at my office, this 13th day of July, A. D. 1867.

ISAAC MORRISON, *U. S. Com'r.*

89 *Deposition of Bridget Clarey.—Filed July 13th*, 1867.

In equity in the circuit court of the United States for the district of West Tennessee.

STEPHEN M. JONES
*vs.*
JOSEPH J. ANDREWS.

The deposition of Bridget Clarey, taken by consent before Isaac Morrison, on this 13th day of July, 1867, at my office in the city of Memphis.

1st. quest. What is your pursuit, and what connection did you have with the Commercial Hotel while it was occupied by by S. M. Jones, & how long did you remain?

Ans. A do house and chamber work. I was in the house before he got it from Reed and Bryson, and remained there in Mr. Jones' employ during the whole time he & his family occupied, up to Aug., 1862.

90 Quest. 2. State you knowledge of the fire, and what furniture was destroyed by that fire.

Ans. In the early part of the year 1862, there was a fire in the Commercial Hotel. The portion of the house involved in the fire was the two wings, kitchen, & privy; one of these wings contained the dining-room. The fire extended from top to bottom of the wings.

All the furniture in the inside wing-rooms, including bedding, mattrases, bedsteads, carpets, and everything in the way of furniture in those rooms was destroyed; all the kitchen furniture, and about half of the dining-room furniture was destroyed at the same time.

In the outside rows of wing bed-rooms, the furniture was damaged, but not destroyed. Perhaps there was not as much as half the dining-room furniture destroyed; it was damaged, scorched, and blistered, but could be repaired.

Quest. Tell, as near as you can, what the furniture was which was destroyed in the inside wing-rooms.

91 Ans. There was five large furnished rooms in the inside of the west wing. In one of them, called the jury-room, there were 8 beds, 4 wash-stands, 2 bureaus, 13 chairs, and a carpet.

The next room had 4 beds, 2 wash-stands, 2 bureaus, & some chairs, & a carpet. In the next room there was the same furniture. In the story above, one large room occupied by the chamber-maids & other girls, had 5 or 6 beds, 1 bureau, 2 wash-stands, small table, & carpet, and 7 or 8 chairs.

The adjoining room, occupied by the male servants, had about the same furniture, except carpet; another room on that floor was unfurnished.

In the inside row of the east wing, there were on the two floors, 10 small bed-rooms, each furnished with one bed, bureau, wash-stand, carpet, small table, a chair or two. In the dining-room the principal loss was in piling the furniture up, and the scorching, & blistering;

92 it was pretty much all repaired.

In the kitchen was a fine cooking-range, with dish-table, and wash-trough, broiling-flue, and pans, dishes, &c., which were all destroyed.

Int. State what you know in reference to the 11 rooms on south end of west wing, over the restaurant. Was it occupied by Mr. Jones or not? State what you know about it.

Ans. When Mr. Jones first took the hotel, there were 11 rooms which were occupied by some one else, over the restaurant; afterwards Mr. Jones went into the possession of the 11 rooms, and furnished them with new furniture. I did the chamber-work for these rooms while he had them; Mr. Jones furnished and used them as sleeping-rooms. In these 11 rooms, Mr. Jones put 3 beds in one, 2 in another, and 1 bed in each of the others; and there was a wash-stand, bureau, table, and chairs, and a carpet in each room; there were five wardrobes distributed in these 11 rooms.

93 There was new mattrasses and pillows and necessary bed-clothing in every one of these rooms.

Quest. Were you in the hotel when Reed & Bryson were in possession of the hotel?

Ans. I was there before, and at the time Reed & Bryson took possession and remained until they turned it over to Mr. Jones.

Quest. What did Mr. Jones do with the furniture which Reed & Bryson left in the house?

Ans. He kept it in the house, and the furniture which was burnt was the same furniture. Mr. Andrews occupied the house for one month himself, before he let Reed & Bryson have it, and he left this furniture with them, and it was the same furniture which was burnt. I was in the house as chambermaid during the month Andrews occupied it. It was not all the old furniture, but all that was in those rooms was burnt.

Quest. After those rooms in which the furniture was burnt was

94 repaired, did Mr. Jones refit them with furniture; if so, was it with old or new furniture?

Ans. He refitted them with new furniture, new low walnut bedsteads, &c.

And further saith not.

her
BRIDGET + CLARY.
mark.

Witness: HENRY CRAFT.

Cross-examination waived. CRAFT, *for Andrews.*

UNITED STATES OF AMERICA,
*District of West Tennessee:*

The foregoing deposition of Bridget Clary was this day taken before me, and the said witness by me duly sworn to the truth of the same on this day.

This 13 day of July, A. D. 1867.

ISAAC MORRISON, *U. S. Com'r.*

95 *Deposition of F. M. Cash.—Filed July* 15, 1867.

Circuit court of the United States for the western district of Tenn'ssee.

S. M. JONES
*vs.*
JOS. J. ANDREWS ET ALS.

Deposition of F. M. Cash, taken the 15 of July, 1867, at the office of Humes & Poston, No. 33 So. Court street. Mem.—By agreement of counsel, without notice or other formalities, to be read in the above case on behalf of the complainant.

1st quest. Please state whether P. Reed, of the firm of Reed & Bryson, placed in your hands certain notes made by S. M. Jones, the compl't; if so, state the time, what they were put in your hands for, and what his instructions were, and how they finally went out of your hands.

Ans. P. Reed, of that firm, placed 24 notes made by S. M. Jones &
96 Son, for $625^{00}$ each, payable to Reed & Bryson, and endorsed by them and also by P. Reed; endorsements in blank. They were delivered to me on the 3rd day of April, 1866, as the secretary of the Memphis Insurance Company, with instructions to forward them to Augusta for collection, and we were authorized by him, by letter dated April 3rd, 1866, addressed to Murphy and Cash, & signed "P. Reed," to propose, through our correspondents, Branchton & Co., of Augusta, to S. M. Jones & Son, to give up the entire notes if they would pay to them $4,375^{00}$ (a copy of which letter is hereto attached as "Ex. A"), which said notes we forwarded by express with the instructions, and the proposition was refused by S. M. Jones, as we were advised by our correspondents.

On the 17 of May, 1866, we ordered Branch Son & Co. to forward the notes back to P. Reed, at Memphis, by express. (A copy of this letter is hereto attached as "Ex. B.")

97 On the 21st of May, Mr. Reed called on us and said he had not received the package, and he requested us in letter to submit a second proposition through Branch Son & Co. to. S. M. Jones, to take $3,850^{00}$ in full, if paid promptly, & deliver up all the 24 notes. (A copy of this letter is hereto attached as "Ex. C.") On 22nd of May, we wrote Branch & Co., submitting through them to Jones & Son, Reed's second proposition. (A copy of which is hereto attached as "Exhibit D.")

On 26 May we received from Branch, Sons & Co. a letter stating that the package of notes had been forwarded to P. Reed, at Memphis, several days previous to receipt of our last. On seeing Reed, he acknowledged the receipt of the notes by express, and declined making any further propositions on the notes, as suit had been commenced.

From that day I know nothing further about them.

F. M. CASH.

Oath to this deposition waived & cross-examination waived.

KORTRECHT & CRAFT,
*Sol'rs for Def't.*

98 *Exhibit A.*

MEMPHIS, TENN., *April 3d*, 1866.

Mess. MURPHY & CASH:

GENT'N: If S. M. Jones & Son will pay promptly four thousand three hundred and seventy-five dollars, I am willing to release and hand over to them all of the twenty-four notes for five hundred & twenty-five dollars each. Should they refuse to pay the above amounts, you will please have suit brought against them & collect every dollar you can. I think that Jones & Son ought to pay interest and protest fees on the seven notes that was protested, but in order to get the money promptly I will take the above amount of four thousand three hundred and seventy-five dollars for the whole twenty-four notes of six hundred & twenty-five dollars each.

Truly yours, &c.,
(S'g'd) P. REED.

True copy.

99 "*Exhibit B.*"

MAY 17, —6 .

Mess's. BRANCH SONS & Co., *Augusta, Ga.:*

GENTLEMEN: Your favor of the 7th inst. is received. Oblige us by sending the notes of Jones and Son, sent you some time ago, to P. Reed, of this city, by express. Do not pay the charges if you send them without. If you have to pay the charges will reimburse you promptly.

Very respectfully, J. J. MURPHY, *Pres't.*

"*Exhibit C.*"

MEMPHIS, TEN., *May* 21, 1866.

F. M. CASH, Esq.:

D'R SIR: If Mr. S. M. Jones will pay thirty-eight hundred & fifty dollars promptly, I will release him, & you may hand him all of the rent notes, &c.

Yours truly,
(Signed) P. REED.

100 "*Exhibit D.*"

Messrs. BRANCH & SON, *Augusta, Ga.:*

GENTLEMEN: If you have not returned the Jones & Son's notes to P. Reed, as requested by us some days ago, you will please retain them, & Messrs. Jones & Son will pay you $3,850 promptly, & upon such payment you will deliver to them the whole of the notes. If you have sent them they will be returned to you for settlement as above—Jones paying thirty-eight hundred and fifty dollars.

Very respectfully, J. J. MURPHY, *Pres't.*

101 *Deposition of P. H. Bryson.—Filed July* 17, 1867.

STEPHEN M. JONES
*vs.*
JOSEPH J. ANDREWS, P. REED, AND H. M. BRYSON.

Deposition of P. H. Bryson, taken 17th day of July, 1867, by compl't in above cause, pending in the circuit court of the United States, at Memphis, at office of Humes & Poston, No. 33 South Court street, by agreement, without notice.

1st ques. Were you ever in the employ of the compl't; if so, how when, and for what length of time?

Ans. From Sept., 1859, to May, 1861, I was in his employ as clerk, in the Commercial Hotel, in the city of Memphis; the time prob'ly extended to June, 1862.

2nd ques. State all the facts you know in regard to the com-
102 plainant's buying furniture and fitting up the hotel.

Ans. He bought part of his furniture from Reed & Bryson, and part he afterwards bought, furniture, from other sou'ces, at different times. I recollect of his buying carpets from Speed, Donohoo & Strange, and from Leman & Co., and from Nashville. I recollect of his buying the materials, & having made up in the house about 100 new comforts, at a cost of about $6^{00}$ each. They were the largest, heaviest, and finest comforts I ever saw in a hotel. I also recollect his buying a number of new musquito bars from Leman & Co. He bought of Mr. Stickney, formerly proprietor of the Memphis Enquire, or Eagle and Enquirer, two suits of furniture, at upwards of $\$300\frac{00}{100}$, which was fine furniture—rosewood—and he got it very low. I recollect as to the
nine new rooms which he got of Andrews, after the lease from
103 Reed & Bryson; they were furnished with new carpets and good furniture by him. There were three large rooms over the new part fronting on Front Row, one of which was occupied by Reed & family during his and Bryson's lease. Reed, at the date of the turning over the hotel to Jones, reserved and carried off the furniture of this room; and the other two were also vacant; and these three rooms Mr. Jones refitted with new carpets and furniture, & one of them was fitted up with very elegant furniture. He was buying and fitting up by removal all the time. When Reed & Bryson took the hotel by lease from Andrews, I went in with them as clerk, & he found the hotel in a very bad condition as to furniture.

There were very few carpets in the house, and those were very badly
worn, so that Reed & Bryson had to refit with new carpets the whole
104 house nearly. The table-ware and chairs, and indeed everything for the dining-room was refitted by them, except the tables themselves. The bed-clothing & bedding they furnished entirely new. There were very few bedsteads fit for use; the majority were either given to the negroes, or sent to auction and sold. The bureaus were cleaned up, revarnished, & kept there; the wash-stands & the bowls & pitchers of the bed-rooms were almost entirely renewed.

There were some rooms they had not finished repairing & refitting when they assigned their lease to Jones, which he afterwards furnished new.

Ques. What is your business?

Ans. I am now and have been since January, 1866, a furniture merchant in Memphis.

Ques. From your knowledge of the value of the furniture left
105 by Andrews in the house, when Reed & Bryson leased from him, what do you think it was worth?

Ans. From my knowledge of the furniture, & I saw it all, I don't think it was worth more than five hundred dollars.

Ques. What do you know about the safe?

Ans. I know that after Reed & Bryson took possession of the hotel they bought a very fine large safe, with double door, with steel-chilled doors, & inside a burglar-proof money-vault, worth, I should safely say, four hundred dollars, and cheap at that.

They afterwards sold it to Jones, and he kept it so long as he remained in the house.

I saw it there the day he left for Mississippi, as I happened to be be there on that day.

Question. Is there anything in addition which you can state as to the furniture?

106 Answer. Yes; I recollect there were several pieces of old hair-cloth furniture, worn out, with nothing but the frames left; & Mr. Jones bought the materials, hired a man to come to the hotel, & had them all upholstered, renewed, varnished up. He bought a new range for the kitchen from Van, of Cincinnati, at $500\frac{00}{100}$, & paid him to fix it up. He had new gas fixtures put in the dining-room, by Mr. Park. He also had a new pump put into the well and a new one in the cistern. When I left there, the hotel was in complete outfit; all the rooms furnished, and dining-room & kitchen furnished with all that was necessary to run the hotel.

We kept an inventory; indeed, I took it myself, and always kept the list in the office; and I know there was a heavy comfort, a pair of blankets, two pairs of sheets, two pillows, and a bolster-slips, and a

107 m usquito bar, for every bed. For some of the beds there were Marsailles's quilts.

X-question. From your knowledge of the outfit and furniture of the hotel, as Mr. Jones had it when you left, what was it worth?

It was worth & could not have put there at less than $15,000^{00}$. Of course, as I have not estimated the articles separately, this is only a rough estimate, and to the best of my judgment.

Question. How did Mr. Jones keep his house and meet his liabilities up to the commencement of the war?

Answer. I never heard of his refusing to pay his honest debts, & the house while I stayed there was kept in an orderly manner.

Question. How many rooms in the house?

108 Ans. The numbers run up to 110 after Jones took the new rooms, but I don't think the numbers were continuous. I think there were about 100 rooms, including the parlors and exclusive of the dining-room.

Cross-examined:

X-int. 1st. When were you in the Commercial Hotel last before Jones left it?

Answer. The last time I was there before the federals' occupation, was the day that Mr. Jones started to Mississippi. I came back to Memphis I think in the month of August, 1862, and was in the hotel before Mrs. Jones left it and while she was there. I remember she seemed to be troubled about getting a house.

X-int. 2nd. Did you not go through the house when you were there in August; or had an opportunity to know how it was furnished?

109 Answer. I did not go into any room at that time except Mrs. Jones's, and did not have an opportunity to know how the house was furnished then.

And further deponent saith not. P. H. BRYSON.

Sworn to before me this 17th day of July, 1867.

ISAAC MORRISON, *U. S. Com'r.*

110 *Depositions of A. M. Stoddart and N. E. Hazzard.—Filed July* 31, 1867.

Circuit court of the United States for the western district of Tennessee.

STEPHEN M. JONES
*vs.*
JOSEPH ANDREWS, P. REID, & H. W. BRYSON.

The following deposition of Albert M. Stodard was taken on the 12th

day of July, 1867, at the office of Hume & Poston, No. 33 South Court street, Memphis, by agreement, to be read in evidence in the above case on behalf of complainants:

1st question. State your knowledge of S. M. Morgan's taking possession of the Commercial Hotel, in August, 1862, and what furniture was in the hotel at the time. State your means of knowledge, and all you know about the furniture and its value.

111 Answer. I was clerk in the hotel at the time for S. M. Jones. Mr. Morgan came to the hotel, and, as agent of Joseph J. Andrews, gave peremptory orders to Mrs. Jones to vacate the hotel forthwith. She asked him for time to get a house to go into, and he gave her several days. I and other went out, & tried to get her a house. He, Morgan, placed me in charge of the property from the time he gave her notice to quit, with instruction to take care of the property as it stood, house and furniture; show it such person as might desire to lease, and tell them the terms. He claimed all the furniture in the house as the property of Joseph J. Andrews; everything. Mrs. Jones claimed some little household furniture as her individual property, & he ordered me to let her have it. He also requested me to make an inventory of the furniture in the house, which I did in his presence, leaving out a large portion of that furniture which he acknowledged was S. M. Jones'. When Mrs. Jones was ready to

112 move, I apprized Mr. Morgan of her removing and taking the furniture claimed by her, and which I knew was hers; and he told me to let her have such as she claimed as her individual property. I then stayed in the house with my family until November, when he stated to me that the house and furniture was leased, and I left. The following April, the furniture from the house was placed in the hands of W. H. Passmore & Co., for disposition, as auctioneers.

Quest. What became of the inventory you made out, and what was it on?

Ans. The inventory was made out in a common day-book, and I also transcribed it, and gave them both to Mr. Morgan. Neither of the exhibits to Morgan's deposition is the inventory I made out.

Quest. What did you think the furniture you inventoried worth at the time?

Ans. From eight to twelve thousand dollars.

113 Quest. Could you tell whether the exhibits to Morgan's deposition are full inventories of what furniture you inventoried?

Answer. I could not tell accurately, but I see that the piano, safe, bar furniture and fixtures are not in these exhibits. There are also fine carpets not in them, and other things. There were new mattrasses, new feather beds, new bolsters, and new cotton mattrasses, pillows, comforts, which I do not see in either of the exhibits.

Question. What furniture do you mean was left out of the inventories which you made?

Ans. The furniture left out of the inventory was in the rooms occupied by Mr. Jones' wife and daughter, and owned by them individually.

Quest. Was the estimate you put upon the furniture a reasonable and fair one?

114 Ans. I think it was, from my knowledge of the value of furniture at that time.

Quest. Did Mrs. Jones remove any of the inventoried furniture?

Answer. Not a piece, to my knowledge. She was very particular about it; she wa a little fearful that she might do something exceptionable.

Quest. Do you know for what purpose and design Mr. Jones left Memphis in 1862?

Ans. Solely for the purpose of placing his negroes further south, intending to return in a few days. He told me when he left, to take charge of things, & carry it on in his name until he returned; and he also employed Dr. Hazzard & wife to come into the hotel and assist in taking care until his return, as his sons, the clerks, had been taken into the southern army before he left.

115 Quest. During the spring of 1862, was Mr. Jones troubled and deprived of his waiters and hands by impressment by the confederate authorities?

Answer. He was under orders of Gen'l Pillow, having fortifications made around and in the city.

Quest. What became of the safe, so far as you have personal knowledge?

Ans. Mr. Morgan stated to me that he had inventoried that safe to the parties who had leased the property in November, 1862, at a certain price, which I thought very low, and, indeed, told him so. The reason I asked him about the safe was that I knew it belonged to Mr. Jones, and I told him so; but he replied that he considered it as belonging to the——

Question. What was the safe worth at that time?

Answer. I think we held it at $600 $^{66}$; it was fully worth $500 $^{00}$; it was one of the largest size, and had three sets of steel-chilled doors.

116 Question. Please state whether or not you have, since answering the last question above, taken any steps to refresh your recollection as to the articles composing said hotel furniture, and as to their value; if so, set them forth in answer to this, giving articles and values, as well as you may remember.

Answer by witness. Since answering the above I have taken time to study the matter over; have been through the house, visiting most of the rooms, so as to refresh my recollection of their former contents, and having once had perfectly accurate knowledge of them, I was enabled to call up things much more satisfactorily to myself; as I did this I made a memorandum of the various rooms and their contents, and affixed values, according to my recollection of their condition, and the prices of such furniture at that date; and I may further add, that since

117 that date I have been in the furniture trade, and have acted pretty extensively as a licensed appraiser, and am now satisfied that my valuations may be relied on as approximately correct. The list of furniture, and the prices or values made, as above stated, is hereto exhibited, marked "Schedule A," and made a part of this deposition.

A. M. STODARD.

(The defendant Andrews, by his solicitors, objects to all the foregoing deposition for incompetency and irrelevancy, and particularly objects to the last question and answer as being wholly inadmissible, but cross-examined as follows:)

(1.) Examine "Exhibit C" to the deposition of S. P. Morgan in this cause, now shown you, and state whether it is a correct list and account ot sales of furniture sold by the house of Pasmore & Co., in the year 1863, for account of S. T. Morgan, agent of Jos. J. Andrews.

Ans. I was clerk for Pasmore & Co. at the said time, and the exhibit shows a correct list and a true account of the sales of the said furniture, so far as I know.

118 Question. You say you staid in the Commercial Hotel 'til November, 1862, in charge of the hotel?

Answer. I do.

Question. Was any of the furniture taken from the hotel while you were there; if so, who took it, and what am'ts were taken, where was it taken to, and for what purpose was it taken?

Answer. There was furniture taken out by direction of Mr. Morgan, by Mrs. Jones; she claimed it as her own individual property. I went for Mr. Morgan and told him Mrs. Jones was taking furniture out of the hotel, and requested him to come and see that what she took belonged to her. He told me to let her have that she claimed, as he did not suppose she would take anything that did not belong to her. The am't Mrs. Jones took I cannot state exactly; but it was the furniture for five rooms, and fine furniture. There was no other furniture
119 taken out of the hotel during the time I staid there, except that before mentioned. Mrs. Jones carried the furniture to a private house on Second street, near Exchange. I do not know what she did with it afterwards.

Question. Did Mrs. Jones remove all the furniture she desired to, or was she prevented from removing anything she claimed?

Answer. I think Mrs. Jones wanted to take the piano, and that Mr. Morgan refused to let her do so. I think there was some controversy about some other things, but I do not recollect what they were; I think it was a mirror and some feather beds.

Question. Did you not inform Mr. Morgan that Mrs. Jones was removing furniture that belonged to Andrews?

Ans. I did not.

Question. Do you know anything of a writ of replevin having been sued out by Andrews, or Morgan as his agent?

Ans. I do not.

120 Question. Who was the party to whom the hotel was leased when you left it?

Answer. Converse & Filkins were the persons.

Question. How long did they remain in the hotel?

Answer. I think they remained there 'til in April, 1863.

Question. Who took & occupied the hotel after Converse & Filkins?

Ans. I think the United States naval hospital was there shortly after Converse & Filkins left it. I do not know whether the hospital was put there immediately after Converse & Filkins left or not.

Question. Did you make the inventory of the furniture before or after Mrs. Jones left the hotel?

Ans. I made it while Mrs. Jones was in the house, immediately following Mr. Morgan's order to Mrs. Jones to vacate.

Question. Did Mrs. Jones remove her furniture before or after you made the inventory?

121 Answer. After I made it.

Question. Were you present when Mrs. Jones removed her furniture, or did you see it after it was taken out of the hotel?

Ans. I was present when she had it removed.

Question. Do you remember the number of car-loads, or the person who removed it?

Answer. I do not.

Quest. Was the furniture in every room of the hotel complete when you made the inventory?

Ans. Pretty much, with the exception of the lumber rooms, which had extra furniture, bedding, &c.

Question. What was the quality and style of the furniture when you took the inventory?

Ans. Some of it was very nice furniture, might be called fine, and some of it was old and dilapidated.

Question. What proportion of the furniture was fine?

Answer. About two-thirds of the hotel had good furniture, as
122 good as would be needed for a hotel; most of it was new furniture that had been replaced.

Question. How many of the rooms of the hotel were furnished when Converse & Filkins went into it?

Answer. I could not say. The hotel was all furnished when I left it, with the exception of three or four rooms. They were to have occupied it the day I left, but I do not know whether they did or not. They were there on the day I left.

Question. Were you a judge of the value of furniture when you took the inventory you gave Morgan?

Answer. I think I was. I had been in the furniture business in Baltimore, New Orleans, & Boston, and all over the country.

Question. Have you taken the value of furniture now, or the value of furniture in 1862, in making your estimate?

123 Answer. What I believed it to be worth then.

Question. In Schedule "A," to your deposition, have you supposed the furniture estimated to be new, or all of the same quality?

Ans. I have not. I have made the estimate as if some was as good as new, and the other as medium and common.

Question. Was any furniture that belonged to Jones included in the inventory you made?

Ans. I took down furniture that was claimed by Jones. He claimed all in the hotel, and I always supposed it belonged to him.

Question. Did you know that Andrews had any furniture in the hotel?

Ans. I did not.

Question. Were you not offended at being put out of the hotel in November, 1862, and have you not considerable feeling about the matter now?

124 Ans. I was not, sir; and have not the slightest feeling about it now.

Question. Are you not the security on the injunction bond in this cause?

Answer. I am.

Question. Have you any other interest in the suit, or do expect to gain or lose by the event of this suit?

Answer. I have no interest, and do not expect to gain or lose by its event.

Question. Did not Mrs. Jones have a widowed daughter with her; and when she was notified to leave the hotel, was it not claimed that some of the furniture belonged to her?

Answer. She did; her name was Mrs. Marrs, and the furniture she claimed was a portion of the family furniture removed by Mrs. Jones. She also claimed the piano above mentioned.

125 Question. Do you whether Mrs. Jones removed any furniture that was inventoried?

Answer. She did not remove any of the furniture that was inventoried by me.

Question. Did your inventory include all the furniture in the hotel?

Answer. It did; all excepting the family rooms occupied by the family of Mr. Jones.

Question. What was the style and quality of the furniture removed by Mrs. Jones?

Ans. Pretty fair furniture.

Question. Was the furniture taken by Morgan to Passmore & Co. safely kept until sale, and faithfully accounted for?

Answer. It was. I was employed in the house.

Question. Is the Schedule "A" made from memory and an ex-
126 amination of the rooms in the hotel, or from data taken from you at the time or before you left the hotel?

Answer. From memory and a careful study of the rooms of the hotel, and from my intimate knowledge of the bearings of the hotel.

Question. What amount in cash would the furniture in the hotel have realized at auction in April, 1863, in Memphis.

Answer. I believe the whole furniture in the house, as inventoried by me, would have brought $8,000^{00}$, if sold at the time and place inventoried.

A. M. STODARD.

Re-examination:

Question. Do you know that all of the furniture from the hotel was taken to Passmore & Co.?

127 Answer. I do not.

Question. Do you know that the list of sales shown you include all that was taken to Passmore & Co?

Ans. I do not; but I do know the correctness of that house. There is not a more correct house in Memphis.

& further saith not.

A. M. STODARD.

We agree that the foregoing deposition shall be read without exception, because of the witness A. M. Stodard's having been a security of S. M. Jones on his injunction bond in this case, the said Stodard having been released this day, and other sufficient security given in his stead by deed of trust. All other exceptions are waived, except such as may arise as to relevancy or competency of the facts stated. Notice waived & other formalities.

JOHN J. ANDREWS.
KORTRECHT & CRAFT,
& W. M. RANDOLPH, *Sol's.*

128 *Schedule A to Albert M. Stoddard's deposition in S. M. Jones v. J. J. Andrews and others.*

Schedule of furniture in the Commercial Hotel, August, 1862.

ROOM NO. 82 (KNOWN AS JURY-ROOM.)

| | | |
|---|---|---|
| 8 bedsteads, $80; 8 mattrasses, $64 | 144 00 | |
| 8 cotton mattrasses, $2 40; 16 sheets and slips, $48$^{00}$; | 288 00 | |
| 8 cofforts, $80; 8 quilts, $64$^{00}$; 8 bolsters and 16 pillows, 96$ | 240 00 | |
| 2 bureaus, 40; 4 washstands, 20; 4 bowls & ueres 12. | 72 00 | |
| 13 chairs, 13; 8 chambers, 12; 1 centre-table, 6 | 31 00 | |
| 2 light-stands, 7; 1 carpet, 66; 2 shades, 5 | 78 00 | |
| Shovell & tongs, 1 50; 6 spittoons, 3 | 4 50 | |
| | | 857 50 |

ROOM NO. 83.

| | | |
|---|---|---|
| 3 bedsteads, 45; 6 mattrasses, 114; 3 quilts, 24.... | 183 00 | |
| 3 comforts, 30; 3 chambers, 4 50; 1 carpet, 132.... | 166 50 | |
| 3 bolsters & 6 pillows, 36; 1 wardrobe, 25; 6 chairs, 6; | 67 00 | |
| 1 rocker, 6; 3 bowls & uwers, 9; 3 shades, 7 50; 1 rug, 5 | 27 50 | |
| 1 shovell & tongs, 1 50; 1 bureau, 30; 3 washstands, 15. | 46 50 | |
| | | 400 50 |

ROOM NO. 84.

| | | |
|---|---|---|
| 4 bedsteads, 60; 8 mattrasses, 304; 4 quilts, 32.... | 396 00 | |
| 4 comforts, 40; sheets & slips, 24; 8 pillows & 4 bolsters, 48 | 112 00 | |
| 4 bowls, &, 12; 2 bureaus, 40; 2 washstands, 10.... | 62 00 | |
| 6 chairs, 6; 1 wardrobe, 25; 1 rug, 5 | 36 00 | |
| 4 chambers, 6; 1 table, 5; 3 shades, 5 | 16 00 | |
| | | 622 00 |
| Amount forw'd | | $1,970 00 |
| 129 Amount bro't forward | | 1,970 00 |

ROOM NO. 85.

| | | |
|---|---|---|
| 4 bedstead, 60; 8 mattrasses, 304; 4 quilts, 32 .... | 396 00 | |
| 4 comforts, 40; sheets & slips ,24; 8 pillows & 2 bolsters, 48 | 112 00 | |
| 4 bowls, &, 12; 2 bureaus, 40; 2 washstands, 10..... | 62 00 | |
| 6 chairs, 6; 1 table, 5; 3 shades, 7 50 | 18 50 | |
| | | 624 50 |

ROOM NO. 86.

| | | |
|---|---|---|
| 3 bedsteads, 45; 6 mattrasses, 114; 3 comfort, 30; 3 quilts, 24 | 213 00 | |
| 3 bolsters & 6 pillows, 36; 3 chambers, 4 50; sheets & slips, 18 | 58 50 | |
| 1 carpet, 132; 5 chairs, 5; 1 wardrobe, 25; 1 bureau, 30. | 192 00 | |
| 2 washstands, 10; 2 shades, 5; 1 table, 3 50; 1 rocker, 15 | 33 50 | |
| | | 497 00 |

ROOM NO. 87.

| | | |
|---|---|---|
| 4 bedsteads, 60; 8 mattrasses, 304; 4 comforts, 40; 4 quilts, 32 | 436 00 | |
| Sheets & slips, 24; 8 pillows & 4 bolsters, 48; 4 bowls, 12 | 84 00 | |
| 2 bureaus, 40; 2 washstands, 10; 6 chairs, 6; 1 wardrobe, 25 | 81 00 | |
| 1 rug, 5; 4 chambers, 6; 1 table, 5; 2 shades, 5; 1 rocker, 6 | 27 00 | |
| | | 628 00 |

ROOM NO. 88.

| | | |
|---|---|---|
| 3 bedsteads (old), 6; 6 mattrasses, 138; 3 comforts, 30. | 174 00 | |
| 3 quilts, 24; pillows & bolsters, 36; sheets & slips, 18 | 78 00 | |
| 3 chambers, 4 50; bowls, &, 9; 1 bureau, 12; 2 washstands, 7 50 | 33 00 | |
| 1 table, 1 50; 1 carpet, 99; 4 chairs, 2 shades, 5 | 105 00 | |
| 3 pr. blanketts | 30 00 | |
| | | 410 50 |
| Am't forward | | 3,930 00 |
| 130 Am't bro't forward | | 3,930 00 |

ROOM NO. 62 (OCCUPIED BY EMPLOYEES.)

| | | |
|---|---|---|
| 6 common bedsteads, 6; 6 mattrasses, 18; blanketts, 7 50 | 31 50 | |
| Comforts, 7 50; pillows, 6; 2 tables, 2 50; 6 chairs, 3. | 19 00 | |
| 1 chamber, 1 50; sheets, 6; bowls, &, 3; 3 washstands, 5 | 15 50 | |
| | | 66 00 |

ROOM NO. 63.

| | | |
|---|---|---|
| 3 common bedsteads, 6; mattrasses, 18; 3 blanketts, 7 50 | 31 50 | |
| Comforts, 7 50; pillows & bolsters, 6; 2 tables, 2 50; 6 chairs, 3 | 19 00 | |
| 1 chamber, 1 50; sheets, 6; bowls, &, 3; 3 washstands, 5 | 15 50 | |
| | | 66 00 |

ROOM NO. 64.

| | | |
|---|---|---|
| 6 bedsteads, 12; mattrasses, 36; 6 blanketts, 15; comforts, 15 | 78 00 | |
| Pillows, 6; 3 tables, 3 75; 5 chairs, 2 50; 6 chambers, 3 | 15 25 | |
| Sheets, 12; bowls, &, 5; washstands, 6 | 23 00 | |
| | | 116 25 |

ROOM NO. 65.

| | | |
|---|---|---|
| 4 bedsteads, 8; 8 mattresses, 25; 4 blanketts, 10; 4 comforts, 10 | 53 00 | |
| 4 pillows, 4; 2 tables, 2 50; 2 chairs, 1; 2 chambers, 1 50 | 9 00 | |
| Sheets, 8; bowls, &, 5; washstands, 5 | 18 00 | |
| | | 80 00 |

ROOM NO. 66.

| | | |
|---|---|---|
| 3 bedsteads, 6; 6 mattrasses, 18; 3 comforts, 7 50; 6 pillows, 3 | 34 50 | |
| Blanketts 7 50; 2 tables, 2 50; 4 chairs, 2; chambers, 1 50 | 13 50 | |
| Sheets, 6; bowls, &, 4 50; washstand, 3 | 13 50 | |
| | | 61 50 |

ROOM No. 1.

| | | | |
|---|---|---|---|
| Occupied by S. M. Jones & wife, & furniture removed by them when ordered to vacate. | | | |
| Amount forward | | | 4,319 75 |
| 131 Amount bro't forward | | | 4,319 75 |

ROOM No. 2.

| | | |
|---|---|---|
| 1 bedstead, 15; 2 cotton mattrases, 60; 1 bl'k walnut bureau, 25 | 100 00 | |
| 1 washstand, 12; 3 chairs, 3; 2 sheets & slips, 6; 1 blankett, 10 | 31 00 | |
| Comforts, 8; 1 bowl, &, 2 50; 1 chamber, 1 50; 2 pillows & bolsters, 12 | 24 00 | |
| 1 quilt, 8; 1 carpet, 20; 1 light-stand, 2 50 | 30 50 | |
| | | 185 50 |

ROOM No. 3.

| | | |
|---|---|---|
| 1 fine mahogany bedstead, 125; & washstand, 25; bureau, 75 | 225 00 | |
| 1 wardrobe, 75; 1 table, 25; 4 hair-seated chairs, 20. | 120 00 | |
| 2 spittoons, 4; 1 hair-seated rocker, 25; 1 spring mattrass, 50 | 79 00 | |
| Sheets, 15; 1 quilt, 10; 1 comfort, 10; 1 blankett, 10; 1 carpet, 75 | 120 00 | |
| Pillows & bolsters, 15; 1 mirror, 75; 2 setts curtains, 50; 2 shades, 10 | 150 00 | |
| 1 rug, 7; bowl, &, 7 50; 1 chamber, 2 50; shovel & tongs, 2 | 19 00 | |
| | | 713 00 |

OFFICE FURNITURE & FIXTURES.

| | | |
|---|---|---|
| 1 counter, 50; 1 desk, 30; 1 large safe, 500; 1 clock, 25 | 605 00 | |
| 1 water stand & cooler, 15; stove & pipe, 60; 1 news stand & counter, 40 | 115 00 | |
| 36 chairs, 90; 12 spittoons, 12 | 102 00 | |
| 1 cigar stand & fixtures, including 1 mirror, 10; 8 tobacco jars, 12; 1 cutter, 3 | 25 00 | |
| 1 showcase, 10; shelving, 5; 5 doz. candlesticks, 15- & lambs, 3 doz., 12 | 30 00<br>12 00 | |
| | | 889 00 |

BAR-ROOM.

| | | |
|---|---|---|
| 1 large mirror, 250; 5 oil paintings, 50; 8 decanters, 20 | 320 00 | |
| 4 doz. cut-glass tumblers, 16; 1 beer pump & fixtures, 25 | 41 00 | |
| 1 stove & pipe, 15; 1 d'z. bar bottles, 12 | 27 00 | |
| | | 388 00 |
| Amount forward | | $6,495 25 |
| 132 Amount bro't forward | | 6,495 25 |

DINING-ROOM.

| | | |
|---|---|---|
| 5 extension tables, 150; 6 round tables, 36; 96 chairs, 192 | 378 | |
| 22 table-cloths, 66; 4 castors, 112; 7 castors, 70; 5 doz. knives, 50 | 298 | |
| 5 doz. plated forks, 50; 5 doz. goblets, 20; 10 doz. large plates, 30 | 100 | |
| 10 " small plates, 25; 20 doz. platters, 60; 7 doz. cups & saucers, 28 | 113 | |
| 2 soup tureens, 15; 4 coffee & tea urns, 50; 96 napkins, 24 | 89 | |
| 7 doz. teaspoons, 49; 7 doz. tablespoons, 77 | 126 | |
| Lot of old dishes, &c., 2 large stoves & pipes, 80 | 80 | |
| | | 1,184 00 |

PANTRY.

| | | |
|---|---|---|
| 2 tin safes, 18; 1 dish table, 5 | 23 | 23 00 |

KITCHEN.

| | | |
|---|---|---|
| 1 large range, 500; wash trough & tables, 25; lot pans, 10 | 535 00 | |
| 3 carving knives & forks, 7 50; 1 steak-broiler & flue, 25 | 32 50 | |
| 1 extra chimney of sheet-iron for kitchen, 30 | 30 00 | |
| | | 597 50 |

PASTRY-ROOM.

| | | |
|---|---|---|
| 1 new bake-oven, 125; 6 Russian pans, 18; 1 bread tray, 10 | 153 00 | |
| 3 doz. muffin-rings, 3; 4 large tin pans, 3; 2 tables, 15 | 24 00 | |
| 1 tin safe, 10; new pump for cistern, 15; new pump in well, 75 | 100 00 | |
| New gass-fixtures in dining-room, 125 | 125 00 | |
| | | 402 00 |

WASH & IRONING ROOM.

| | | |
|---|---|---|
| 1 laundry stove & pipe, 40; 2 tables, 20 | 60 00 | |
| 2 large wash-kettles, 40; lot irons, 8 | 48 00 | |
| | | 108 00 |
| Amount forward | | 8,809 75 |
| 133 Amount bro't forward | | 8,809 75 |

ROOM NO. 43 (OLD FURNITURE.)

| | | |
|---|---|---|
| 1 bedstead, 3; 1 bureau, 4; 1 washstand, 1; carpet, 2 | 10 00 | |
| 1 table, 3; old chairs, 1 50; chamber, 0 50; bowl, &, 1 | 6 00 | |
| 1 looking-glass, 0 50; pillows, 2; sheets & slips, 2 | 4 50 | |
| 4 mattrasses, 23 | 23 00 | |
| From room 43 to room 49, inclusive, the furniture was the same, making 7 rooms, 43 50 | 304 50 | |
| | | 348 00 |

ROOM No. 50 (NEW FURNITURE AFTER THE FIRE.)

| | | |
|---|---|---|
| 1 bedstead, 10; 1 bureau, 20; 1 washstand, 4..... | 34 00 | |
| 4 chairs, 6; table, 3; 1 looking-glass, 2; carpet, 20. | 31 00 | |
| Window shades, 2; bowl, &, 2; chamber, 1 50..... | 40 50 | |
| Sheets & slips, 6; bolster & pillows, 9; blanketts, 5; comforts, 6 ..... | 26 00 | |
| | | 131 50 |
| Rooms No. 51 to 56, inclusive, were all furnished alike with new furniture after the fire, the total of which is | | 927 50 |

ROOM No. 57 TO 63, INCLUSIVE.

| | | |
|---|---|---|
| These seven rooms were all furnished with old furniture, & the costs of which each room, 7, @ 69$^{00}$.. | | 483 00 |
| | | 10,699 75 |
| 134 Amount bro't forw'd..... | | 10,699 75 |

ROOM No. 64.

| | | |
|---|---|---|
| Furnished with new furniture after the fire in same style & at same expense as rooms 50 to 56..... | | 132 50 |

ROOM No. 8 (OLD FURNITURE.)

| | | |
|---|---|---|
| 1 bedstead, 4; 1 wardrobe, 5; 1 washstand, 2; 1 bureau, 6 ..... | 17 00 | |
| 4 chairs, 4; 1 table, 3; bowl & ewer, 1; chamber, 1. | 9 00 | |
| Carpet, 6; sheets & slips, 2; looking-glass, 1; pillows, 2 | 11 00 | |
| 2 mattrasses, 26; blankets, 4; 2 comforts, 6..... | 36 00 | |
| | | 73 00 |

ROOM No. 9.

| | | |
|---|---|---|
| 1 bedstead, 4; 1 wardrobe, 5; 1 washstand, 2; bureau, 6 ..... | 17 00 | |
| 3 chairs, 3; table, 2; bowl & ewer, 1; chamber, 1; carpet, 6..... | 13 00 | |
| Sheets & slips, 2; looking-glass, 1; 2 mattresses, 26; blanketts, 4..... | 33 00 | |
| 2 comforts, 6; pillows, 2..... | 8 00 | |
| | | 71 00 |

ROOM No. 20.

| | | |
|---|---|---|
| 1 bedstead, 4; 1 bureau, 6; 1 washstand, 2; chairs, 1 | 13 00 | |
| 2 mattreses, 20; pillows, 1; sheets, 2; comforts, 2.. | 25 00 | |
| | | 38 00 |

ROOM No. 21.

| | | |
|---|---|---|
| 1 bedstead, 4; 1 bureau, 6; 1 wardrobe, 6; washstand, 2 | 18 00 | |
| Comfort, 5; 2 chairs, 2; looking-glass, 1; 2 mattrasses, 30..... | 38 00 | |
| Carpet, 5; blanketts, 5; pillows & bolters, 6; sheets & slips..... | 20 00 | |
| Bowl, ewer, & chamber, 3 50..... | 3 50 | |
| | | 79 50 |
| Amount forward ..... | | 11,093 75 |

| | | | |
|---|---|---|---|
| 135 | Am't bro't forward | | 11,093 75 |
| | **Room No. 18.** | | |
| | 3 bedsteads, 12; bureau, 6; carpet, 10; wardrobe, 6. | 34 00 | |
| | 2 washstands, 5; table, 1 50; 6 mattrasses, 70; pillows, 5 | 81 50 | |
| | Sheets & slips, 12; 3 chambers, 3; 3 comforts, 15; 3 blanketts, 12 | 42 00 | |
| | Bowl & ewer, 1 50; looking-glass, 1 | 2 50 | |
| | | | 160 00 |
| | **Room No. 14.** | | |
| | 1 bedstead, 4; bureau, 6; washstand, 2; mattrass, 25 | 37 00 | |
| | Chamber, 1; pillows, 2; comforts, 5; blanketts, 5 | 13 00 | |
| | Sheets & slips, 5; carpet, 6; look'g-glass, 1; chairs, 1 | 13 00 | |
| | Bowl & ewer, 1 50; shades, 1 | 2 50 | |
| | | | 65 50 |
| | **Room No. 15.** | | |
| | 2 bedsteads, 8; bureau, 6; 4 mattrasses, 40; carpet, 5. | 59 00 | |
| | Pillows & sheets, 12; 2 washstands, 4; 4 chairs, 4 | 20 00 | |
| | 2 bowls & ewer, 3; chambers, 2; comforts, 8; blankets, 8 | 21 00 | |
| | Looking-glass, 1; table, 1 | 2 00 | |
| | | | 102 00 |
| | **Room No. 16.** | | |
| | 2 bedsteads, 4; bureau, 6; 2 washstands, 4; wardrobe, 6 | 20 00 | |
| | 4 mattrasses 50; pillows & bolsters, 18; 2 comforts, 8 | 76 00 | |
| | Blankets, 10; sheets & slips, 10; chambers, 2; bowl & ewer, 3 | 25 00 | |
| | Carpet, 8; 4 chairs, 4 | 12 00 | |
| | | | 133 00 |
| | **Room No. 10 (new furniture.)** | | |
| | 3 bedsteads, 30; wardrobe, 15; 2 washstands, 10; bureau, 20 | 75 00 | |
| | 2 tables, 10; 6 mattrasses, 75; pillows & slips, 30; sheets, 12 | 127 00 | |
| | 6 chairs, 10; comforts, 30; carpet, 80; 2 shades, 5; 5 blankets, 30 | 155 00 | |
| | Bowl, ewer, & chamber, 8 50 | 8 50 | |
| | | | 365 50 |
| | Am't forw'd | | 11,919 75 |
| 136 | Am't bro't forward | | 11,919 75 |
| | **Room No. 11.** | | |
| | 3 bedsteads, 30; 1 wardrobe, 15; bureau, 20; washstand, 15 | 80 00 | |
| | 2 tables, 4; matrasses, 75; pillows & slips, 30; sheets, 12 | 121 00 | |

| | | |
|---|---|---|
| Chairs, 10; comforts, 30; carpet 80; 2 shades, 5; blankets, 30 | 155 00 | |
| Bowl, ewer, & chamber | 8 50 | |
| | | 364 50 |

ROOM No. 12.

| | | |
|---|---|---|
| 1 bedstead, 10; washstand, 3; 2 chairs, 2; carpet, 10 | 25 00 | |
| 2 mattrasses, 30; pillows, 9; sheets & slips, 5; blankets, 10 | 54 00 | |
| Comforts, 5; bowl & ewer, 1 50; chamber, 1 50 | 8 00 | |
| | | 87 00 |

ROOM No. 13.

| | | |
|---|---|---|
| 2 bedsteads, 20; bureaus, 20; washstands, 12; wardrobe, 15 | 67 00 | |
| 4 mattrasses, 50; pillows sheet & slips, 30; 6 chairs, 9 | 89 00 | |
| Table, 5; blankets, 20; 2 comforts, 16; carpet, 40 | 81 00 | |
| 2 chambers, 3; bowl & ewer, 4; 2 shades, 5; look'-glass, 2 | 14 | |
| | | 251 00 |

ROOM No. 30.

| | | |
|---|---|---|
| 1 bedstead, 10; bureau, 20; wardrobe, 15; washstand, 12 | 57 00 | |
| Table, 2; matrasses, 35; comfort, 10; p'r blanketts, 10 | 57 00 | |
| Pillows & bolster, 12; sheets & slips, 6; chamber, 1 50 | 19 50 | |
| Bowl & ewer, 2; carpet, 30; shades, 2 50; look'glass, 2; 3 chairs, 3 | 39 50 | |
| | | 173 00 |

ROOMS 31 TO 35, INCLUSIVE.

| | |
|---|---|
| The furniture in these six rooms cost the same & were identical with room No. 30, above, making six rooms, *a* 173 each, a total for these rooms of | 1,038 00 |
| Am't forward | 13,833 25 |
| 137 Amount bro't forward | 13,833 25 |

ROOM 36 (OLD FURNITURE.)

| | | |
|---|---|---|
| 1 bedstead, 5; 1 bureau, 6; 2 mattrasses, 30 | 41 00 | |
| Washstand, 4; table, 2; shades, 2 50; chamber, 1 50 | 10 00 | |
| Sheets, pillow-slips, & bolster, 15; chairs, 2; bowl & e., 1 50 | 18 50 | |
| Comforts, 10; blankets, 10; carpet, 10; l'-glass, 2 | 32 00 | |
| | | 101 50 |

ROOMS No. 37 TO 42, INCLUSIVE.

| | |
|---|---|
| These rooms are furnished in the same manner as room No. 36, adding to 38 & 39 articles necessary for the bedded rooms, the total value of which would be | 913 50 |

ROOM No. 4 (PARLOR.)

| | | |
|---|---|---|
| 1 piano, 400; 1 mirror, 75; 1 large fine mirror, 250.. | 725 00 | |
| 4 sofas, 200; 1 carpet, 100; 1 m. t. table, 40..... | 340 00 | |
| 12 parlor chairs, 50; 2 easy chairs, 90; 1 fine rocker, 35..... | 175 00 | |
| 1 rug, 10; 2 sets curtains, 50..... | 60 00 | |
| 6 oil paintings, 30; 2 china spittons, 6..... | 36 00 | |
| | | 1,336 00 |

ROOMS No. 72 & 73.

These rooms were occupied by Mrs. Mars, widowed daughter of S. M. Jones. The furniture of these two rooms were removed by the family when ordered to vacate the house.

| | | |
|---|---|---|
| Amount forward..... | | 16,184 25 |
| 138 Am't bro't forward..... | | 16,184 25 |

ROOM No. 74.

| | | |
|---|---|---|
| 1 fine oak bedstead, 50; 1 bureau, 50; 1 m. t. washstand, 25..... | 125 00 | |
| 1 wardrobe, 50; 1 table, 7 50; 40 chairs, 10; 1 mirror, 10..... | 77 50 | |
| 1 p'r curtains, 8; 1 spring mattrass, 50; pillows & bolsters, 12..... | 70 00 | |
| Sheets & slips, 10; 1 chamber, 2; bowl & ewer, 4; carpet, 46..... | 62 00 | |
| 1 rug, 5; fender, shovel, & tongs, 10; p'r blanketts, 10 | 33 00 | |
| Comfort, 8; 1 quilt, 10..... | 18 00 | |
| | | 377 50 |

ROOM No. 75.

| | | |
|---|---|---|
| 1 fine bedstead, 45; 1 bureau, 40; washstand, 20; wardrobe, 40..... | 145 00 | |
| Table, 5; chairs, 7 50; mirror, 10; curtains, 16; chamber, 2..... | 40 50 | |
| Spring mattrass, 40; pillows & bolster, 12; sheets & slips, 10..... | 62 00 | |
| Bowl & ewer, 4; carpet, 40; rug, 5..... | 49 00 | |
| Fender & shovel & tongs, 10; p'r blankets, 10; comfort, 8; quilt, 10..... | 38 00 | |
| | | 334 50 |

ROOM No. 5.

| | | |
|---|---|---|
| 2 new walnut bedsteads, 30; 4 mattrasses, 68; 1 bureau, 25..... | 123 00 | |
| 2 washstands, 24; 2 bowls & ewers, 6; 1 wardrobe, 30..... | 60 00 | |
| 1 chamber, 1 50; 4 pillows & 2 bolsters, 24; sheets & slips, 12..... | 37 50 | |
| 1 carpet, 8; 2 p'r blanketts, 20; 2 quilts, 16; 6 chairs, 6..... | 50 00 | |
| 1 rocker, 10; 1 carpet, 40; 2 setts curtains, 16..... | 66 00 | |
| | | 336 50 |

ROOM No. 6.

| | | |
|---|---|---|
| 1 bedstead, 10; bureau, 15; washstand, 5; chairs, 4 50 | 34 50 | |
| Carpet, 20; 2 mattrasses, 34; 1 quilt, 10; comfort, 8. | 72 00 | |
| 1 p'r blankets, 10; bolster & pillows, 12; sheets & slips, 6 | 28 00 | |
| | | 134 50 |
| Am't forward | | 17,367 25 |
| 139 Amount bro't forward | | 17,367 25 |

ROOM No. 7.

| | | |
|---|---|---|
| 2 bedsteads, 45; bureau, 35; wardrobe, 25. | 105 00 | |
| 1 washstand, 10; 6 chairs, 12; 1 rocker, 15; 1carpet, 60 | 97 00 | |
| 1 rug, 10; 4 mattrasses, 76; pillows & bolster, 24... | 110 00 | |
| Sheets & slips, 12; 1 comfort, 8; 1 p'r blankets, 10; 1 quilt, 10 | 40 00 | |
| 1 chamber, 1 50; bowl & ewer, 2; 2 shades, 5; 2 curtains, 10 | 18 50 | |
| Shovel, tongs, & fender, 8; 1 table, 2 50 | 10 50 | |
| | | 381 00 |
| Oil-cloth in hall | | 150 00 |

ROOM No. 71.

| | | |
|---|---|---|
| 3 bedsteads, 36; 3 bureaus, 25; wardrobe, 20; 6 chairs, 12 | 93 00 | |
| 2 washstand, 10; 1 center table, 10; 6 mattrasses, 90 | 110 00 | |
| 1 carpet, 80; 3 p'r blankets, 30; 3 comforts, 30 | 140 00 | |
| 2 shades, 5; sheets & slips, 15; Mersailles quilts, 24. | 44 00 | |
| 3 bowls & ewers, 6; 3 chambers, 4 50 | 10 50 | |
| | | 397 50 |

ROOM 101 (BRIDAL CHAMBER.)

| | | |
|---|---|---|
| Fine Brussels carpet, 120; bedstead, 80; bureau & mirror, 50 | 250 00 | |
| Wardrobe, 75; centre table, 30; washstand, 20; chairs, 30 | 155 00 | |
| Fine mirror, 50; 3 sets fine curtains, 45; 1 spring mattrass, 50 | 145 00 | |
| 2 linen sheets, 14; pillow & bolster cases, 12 | 26 00 | |
| Bowl & p., 5; 2 pillows & bolsters & ticks, 15 | 20 | |
| M. quilt, 8; quilt, 15; chamber & tubs, 3 | 26 00 | |
| 3 setts fine curtains, 36; shovel & tongs, 3; fender, 5 | 44 00 | |
| 1 table, 5; rocking-chair, 35 | 40 00 | |
| 3 window shades, 7 50; 1 fine mosquito net (bobinet), 15 | 22 50 | |
| | | 728 50 |
| Am't forward | | 19,024 25 |
| 140 Am't bro't forward | | 19,024 25 |

ROOM No. 102.

| | | |
|---|---|---|
| 1 walnut bedstead, 15; bureau, 25; table, 5 | 45 00 | |
| 1 carpet, 40; sett curtains, 10; window shade, 2 50. | 52 50 | |
| 1 washstand, 10; 4 chairs, 6; bowl & p., 3 | 19 00 | |
| 2 cot mattrasses, 80; Mersailles quilt, 8; comfort, 10 | 98 | |
| 2 sheets, pillow & bolster cases, 12; 2 pillows & bolster, 10 | 22 | |
| Shovell, tongs, & fire poker, 7; spittoon, 1 50 | 8 50 | |
| | | 245 00 |

ROOM No. 103.

| | | |
|---|---|---|
| 1 bedstead, 15; wardrobe, 20; washstand, 7 50; bureau, 25 | 67 50 | |
| Table, 5; 4 chairs, 8; bowl & pitcher, 3; 1 mirror, 5 | 21 00 | |
| 1 set curtains, 10; chamber & spittoon, 2 50; comfort, 10 | 22 50 | |
| 2 curtain mattrasses, 80; M. quilt, 8; 2 sheets, 8 | 96 00 | |
| 2 pillows, bolster, & cases 22; shovel, tongs & fender, 7 | 29 00 | |
| 1 new carpet, 38 | 38 | |
| | | 274 00 |

ROOM No. 104.

| | | |
|---|---|---|
| 1 walnut bedstead, 15; bureau, 25; wardrobe, 20 | 60 00 | |
| Washstand, 7 50; table, 5; 4 chairs, 8; new carpet, 40 | 60 50 | |
| Window shades, 2 50; curtains, 8; blanketts, 10; comfort, 10 | 30 50 | |
| Quilt, 10; sheets & slips, 6; bowl & ewer, 2 50; chamber, 2 | 20 50 | |
| 2 cotton mattrasses, 80; pillows, 12 | 92 | |
| | | 263 50 |

ROOM No. 105.

| | | |
|---|---|---|
| 2 bedstead, 30; 1 bureau, 25; 1 wardrobe, 20; washstand, 7 50 | 82 50 | |
| 1 table, 5; 4 mattrasses, 100; carpet, 40; 2 quilts, 20 | 165 00 | |
| Comforts, 20; blankets, 20; sheets, pillows, bolster, & slips, 36 | 76 00 | |
| 6 chairs, 6; chamber, 1 50; bowl & ewer, 4; sett curtains, 6 | 17 50 | |
| Window shade, 2 50 | 2 50 | |
| | | 343 50 |
| Amount forward | | 20,150 25 |
| 141 Amount brought forward | | 20,150 25 |

ROOM No. 106.

| | | |
|---|---|---|
| 2 bedsteads, 30; bureau, 25; wardrobe, 20 | 75 00 | |
| Washstand, 7 50; table, 5; 4 mattrasses, 1 80 | 192 50 | |
| 2 quilts, 6; blankets, 20; sheets, slips, pillows, & bolster, 36 | 76 00 | |
| 6 chairs, 6; chamber, 1 50; bowl & ewer 4 | 11 50 | |
| 3 setts window curtains, 18; 2 window shades, 7 50 | 25 50 | |
| | | 280 50 |
| Comforts, 20; carpet, 80 | | 100 00 |

ROOM No. 107.

This room was furnished by J. C. Jones, son of S. M. Jones, & the furniture was removed by the family when the vacated the house.

ROOM No. 108.

| | | |
|---|---|---|
| 1 bedstead, 15; bureau, 25; wardrobe, 20; table, 3. | 63 | |
| Washstand, 5; 4 chairs, 4; 4 bowls & ewer, 2; chamber, 1 50 | 12 50 | |
| 2 mattrasses, 50; pillows & bolster, 12; sheets & slips, 6 | 68 | |
| Comforts, 10; blankets, 10; carpet, 60; shade, 2 50; curtains, 6 | 88 50 | |
| | | 232 00 |

ROOM No. 109.

| | | |
|---|---|---|
| 2 bedsteads, 30; bureau, 25; wardrobe, 20 | 75 | |
| Washstand, 5; table, 5; 2 mattrasses, 100 | 110 | |
| Pillows & bolsters, 24; sheets & slips, 12; chambers, 3 | 39 | |
| Bowl & ewer, 4; 2 shades, 5; 2 curtains, 12 | 21 | |
| 6 chairs, 6; carpet 60 | 66 | |
| | | 311 00 |
| Am't forward | | 21,073 75 |
| 142 Amount bro't forward, (*in pencil*, error) | | 20,150 2 5 |

Rooms from 101 to 109, inclusive, were added to the hotel after S. M. Jones bought the lease from Reed & Bryson & was fitted up entirely with new furniture.

BAGGAGE & STORE ROOM.

This was the depository for extra furniture, bedding & household goods. In the room was—

| | | |
|---|---|---|
| 16 cotton mattrasses (new), @ 40, 640 | 640 00 | |
| 57 feather beds, containing about 35 lbs. each (some of these were entirely new & had never been used), at 60c. per lb., which they were worth at that time, the value of same is | 1,197 00 | |
| 32 comforts, 320; 20 p'r white blankets, 200; 7 carpets, 100 | 620 00 | |
| 5 single bedsteads, 30; 11 double bedsteads 110; 5 washstands, 25 | 165 00 | |
| 3 stoves & pipes, 30; 4 single cot mattrasses, 60. | 90 | |
| 100 plain mosquito bars, 300 | 300 | |
| | | 3,012 |
| Estimated total value | | 23,162 25 |

& many other articles of minor importance & value which were not taken into the general estimate & inventory.

This is the schedule A referred to in deposition of A. M. Stoddard.

FEAM PENN, *U. S. Com'r.*
A. M. STODDARD.

143 The foregoing deposition was sworn to and subscribed before me this 18th day of July, A. D. 1867.

FEAM PENN,
*U. S. Commissioner District Tennessee.*

Circuit court of the United States for the western district of Tennessee.

STEPHEN M. JONES
*vs.*
JOSEPH J. ANDREWS, P. REID, & H. M. BRYSON.

The following deposition of N. E. Hazard was taken on the 18th day of July, 1867, at the office of Harris & Poston, Memphis, Tennessee, by agreement, to be read as evidence in the above case on behalf of the complainant; and being duly sworn to testify the truth, the whole truth, and nothing but the truth, deposeth and sayeth as follows:

Question. Were you ever employed in the Commercial Hotel in
144 Memphis, and in what capacity, and at what time?

Answer. I was in May, 1862, employed by S. M. Jones, as protection for his family, and to assist in taking care of the furniture in the hotel, while S. M. Jones went south with his negroes.

2nd int. Were you acquainted with or knew of the quality and am't of furniture in the hotel at that time? What was its value? If so, state the quality, amount, & value.

Answer. So far as the value of the furniture was concerned, I can state nothing, never having taken an inventory of it; but there was a portion of it that was ordinary hotel furniture, and a part very fine. The hotel was completely fitted up from top to bottom. The carpets were mostly new, as well as most of the furniture.

145 3 int. What was Mr. Jones' object in going south and leaving you in charge of the hotel, & why did he not return?

Answer. On starting there he said that his motive was to save his negroes, and I should suppose that his reason for not returning was because he could not get through the lines, Memphis having been occupied by the federal soldiers on or about the 6th of June, 1862.

4th int. After Memphis was occupied by the federal soldiers, did not some of them board in the hotel without paying their bills?

Ans. Some of them boarded there, & I understood from the clerk of the hotel that they did not pay their bills. There was so much failure on the part of the boarders to pay their bills, that it almost became necessary to suspend.

5th int. What effort was made by yourself & others left in charge of the hotel to sustain it?

146 Answer. Mr. Stoddard, Mrs. Jones & family, and myself did everything in our power to keep up the hotel. About that time my business was such that I had to leave the hotel. I left the hotel while still being conducted by and in charge of Mrs. Jones and Mr. Stoddard.

And further deponenth sayeth not.

N. E. HAZZARD.

Cross-examined for Andrews:

1st x int. Did you hear Mr. Jones say anything about the non-payment of his rent before he went south with his negroes?

Answer. I think not.

2 x-int. Did you not hear him say that the rent was going north, or

to a man who lived in the Lincoln government, or in the lines of the enemies to the Confederate States, or something to that effect, and that hence he had quit paying and would not pay the rent?

147 Answer. I never heard any such conversation.

And further deponent sayeth not.

N. E. HAZZARD.

I, Feam Penn, U. S. commissioner for the district of West Tennessee, do hereby certify that the foregoing deposition of N. E. Hazzard was taken before me at the time and place mentioned in the caption thereof, and by me reduced to writing, and, after the witness had been duly sworn by me to testify the truth and nothing but the truth, was subscribed by him in my presence.

Witness my hand and official seal this 18th day of July, 1867.

FEAN PENN, *U. S. Com'r.*

Fees, $15.

148 *Deposition of M. C. Cayce.—Filed July 31st, 1867.*

Circuit court of the United States for the western district of Tennesee.

STEPHEN M. JONES
*vs.*
JOS. J. ANDERSON ET AL.

The following deposition of M. C. Cayce was taken on the 20th day of July, 1867, at the office of Humes & Poston, 33 South Court street, Memphis, Tennessee, before Feam Penn, United States commissioner for the district of West Tennessee, by agreement, to be read as evidence in the above case, on behalf of the complainant. M. C. Cayce, a witness of lawful age, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says, as follows:

Quest. by compl't. Please state, Mr. Cayce, whether you sold fur-
149 niture to S. M. Jones whilst he occupied the Commercial Hotel in Memphis; if so, state the character, quantity, & value, as near as you may remember.

Ans. by witness. I remember having sold him a lot of furniture which had been used a short time in a boarding-house. It was suitable for use in a first-class hotel—in good repair, as I now remember. My books have been lost, so that I cannot say what the amount was with any degree of accuracy, but the bill was a good, large one, several hundred dollars.

Quest. 2nd. State if you were in the hotel whilst occupied by Mr. Jones, whether you observed the condition or character of the furniture, &, if so, give a description of what you observed.

Answer. I was there by invitation shortly after he commenced keeping it, and was there afterwards; made some observation upon the
150 condition of things, & would say it was furnished as a first-class hotel. I had kept a hotel myself, and felt some interest in his affairs as a friend. I sold the furniture mentioned in the former answer, as auctioneer; that has been my business for many years, so that I am a judge of furniture, and am in the habit of making inventories.

Cross-examined for Andrews:

Quest. 1st. State how much furniture Mr. Jones bo't of you.

Answer. My present impression is from 4 to $600 worth.

Quest. 2nd. From whose boarding-house was it?
Answer. I don't now recollect.
Quest. 3rd What were the articles he bo't of you, chiefly?
Answer. More bedsteads than any other one article; but his purchase embraced bureaus, wardrobes, mattresses, washstands, & other articles. I think all the wood articles were walnut.
Quest. 4th. Can't you remember whose boarding-house you sold
151 the furniture of about that time?
Answer. I don't remember any but a Mrs. Reed, on Second street, & I think I sold hers at her house.

Re-x by compl't:

Quest. [Quest.] Were your observations as to the style in which the house was furnished made before or after this sale?
Answer. I am not able to say; but I think it was after.
And further this deponeth saith not.

M. C. CAYCE.

UNITED STATES OF AMERICA, STATE OF TENNESSEE,
*District of West Tenn., City of Memphis:*

I, Feam Penn, United States commissioner for the district of West Tennessee, duly appointed under the laws of the United States to take and certify depositions, administer oaths, &c., to be used in the United States courts, do hereby certify that the foregoing deposition of M. C. Cayce was taken before me, on the 20th day of July, A. D. 1867,
152 at the time and place in the caption thereof mentioned; that examination, responses, & statements of said deponent were reduced to writing in my presence, and by said deponent sworn to and subscribed in my presence, at the time and place aforesaid, and that said deponant is a resident of Memphis, Shelby County, & State of Tennessee; and that I am not counsel or attorney for either party to said cause, nor in any manner interested in the result thereof.

In testimony whereof, I have hereunto set my hand & official seal this 20th day of July, 1867.

FEAM PENN, *U. S. Commis.*

We agree that this deposition may be read in evidence, subject only to exceptions as to competency and relevancy.

KORTRECHT & CRAFT, *for Andrews.*
HUMES & POSTON, *for Compl't.*

Rec'd from Feam Penn, com'r, July 31, 1867.

ISAAC MORRISON, *D. C.*

Opened Sept. 11, 1867.

A. S. MITCHELL, *Clerk.*

153 *Deposition of Emeline Underwood.—Filed July* 31, 1867.

S. M. JONES
*vs.*
JOSEPH J. ANDREWS ET ALS.

Deposition of Mrs. Emeline Underwood, taken on behalf of the compl't in the above-stated cause, now pending in the circuit court of the United States, at Memphis, on 22nd day of July, 1867, at office of Humes & Poston, No. 33 South Court street, Memphis.

1st ques. During what time did you live in the Commercial Hotel, & in what capacity?

Ans. I lived there from November, 1861, to about the 1st of April, 1862. I was there in capacity of housekeeper, seeing to the manner in which the rooms & furniture, bed-clothing and linen, were kept by the servants.

2nd ques. State how the hotel was furnished; whether completely or incompletely, and with good new furniture, or with old, worn-out
154 furniture; give fully and minutely your knowledge and opinion of the furniture.

Ans. The Commercial Hotel is situated on the southwest corner of Jefferson and Front streets, having a front on Jefferson street and one on Front street; then a wing runs back from the main building; parallel with & in rear of the wing were all furnished with black-walnut furniture, new and good, & new carpets, except the bridal chamber, which was furnished with mahogany furniture. The old furniture was in the wing which runs back from the main building. There were two pianos in the house; one belonged to the hotel, and one to Mrs. Jones's daughter, Mrs. Marr.

3rd ques. What furniture & clothes were in the linen room?

Ans. There were three large wardrobes, a bedstead, and a washstand, wash bowls & pitchers, and the wardrobes contained towels, pil-
155 low-cases, sheets, napkins, bolster-slips. They were full; a good part of them were new, for they were made while I was there; there was a variety, new & old, however.

Cross-examined for Andrews:

Quest. 1st. What kind of furniture was it in the linen room?

Answer. The wardrobes were poplar; the bedstead was walnut.

Quest. 2nd. Do you know who put the furniture in the linen rooms, or in the balance of the house?

Answer. Mr. Jones put most of that in the linen room, & in all that part of the house fronting on Front Row & Jefferson street after I went there; he bought some after I went there; I don't know how much. As he bought better furniture he would move that in the best rooms into rooms further back, & put in that that was bought in its place; that which was in the bridal chamber was there when I went there, & all in the rooms on the same floor was there when I went there.

& further she saith not.

EMELINE UNDERWOOD.

156 We, the undersigned, hereby agree that this deposition may be read as evidence, subject only to exceptions as to competency and relevancy.

KORTRECHT & CRAFT, *for Andrews.*
HUMES & POSTON, *Sol'rs for Compl't.*

UNITED STATES OF AMERICA, STATE OF TENNESSEE,
*District of West Tenn., City of Memphis:*

I, Feam Penn, United States commissioner for the district of West Tennessee, duly appointed under the laws of the United States to take and certify depositions, &c., administer oaths, &c., to be used in the United States courts, do hereby certify that the foregoing deposition of Emeline Underwood was taken before me on the day & at the time and place in the caption thereof mentioned; that the examination,
157 responses, & statements of [of] said deponant were reduced to writing in my presence, and by said deponant sworn to & subscribed in my presence; and that said deponant is a resident of Mem-

phis, Shelby County, Tennessee; & that I am not counsel or attorney for either party to said cause, nor in any manner interested in the result thereof.

In testimony whereof, I have hereunto set my hand and official seal this 2nd day of July, A. D. 1867.

[SEAL.] FEAM PENN, *U. S. Commissioner.*

Fee, $5^{00}$.

158 *Deposition of J. J. Worsham.*

S. M. JONES
*vs.*
JOS. J. ANDREWS.

Deposition of J. J. Worsham, taken before Fean Pen, United States commissioner for the district of West Tennessee, duly appointed according to the laws of the United States to take and certify depositions, &c., at the office of Humes & Poston, 33 South Court street, Memphis, Tennessee, on the 7th day of August, A. D. 1867, by agreement, to be read as evidence in a certain cause now pending in the circuit court of the United States, at Memphis, Tenn., wherein S. M. Jones is complainant, and Jos. J. Andrews is defendant.

Said J. J. Worsham, being duly sworn, deposes and says as follows:

Quest. by compl't. Jones' sol. If your brother-in-law, Geo. Shall,
159 kept hotel in Memphis, please state when, in what house, and how did he dispose of his furniture, giving the date when he quit.

Answer by witness. Geo. Shall & myself kept the Commercial Hotel in Memphis, during the year 1847; then I sold out to him, and he kept until about the end of 1848, when he sold his furniture to Joseph J. Andrews, and then quit hotel-keeping; has not resumed it since then in Memphis.

J. J. WORSHAM.

Cross-examination waived.

C. KORTRECHT, *for Andrews.*

We agree that this deposition may be read in evidence, subject only to exceptions for relevancy & competency.

KORTRECHT & CRAFT,
*Sol'rs for Andrews.*
HUMES & POSTON,
*Sol'rs for Compl't.*

160 UNITED STATES OF AMERICA, STATE OF TENNESSEE,
*District of West Tennessee, City of Memphis:*

I, Feam Penn, United States commissioner for the district of West Tennessee, duly appointed according to the laws of the United States for the district of West Tennessee, to take and certify depositions, &c., to be used or read as evidence in the court of the United States, do hereby certify that the foregoing deposition of J. J. Worsham was taken before me at the time and place stated in the caption thereof; that the questions & responses were reduced to writing in my presence, & by the witness sworn to and subscribed in my presence.

In testimony whereof, I have hereunto set my hand & official seal, this 7th day of August, A. D. 1867.

FEAM PENN, *U. S. Comm'r.*

161 *Deposition of S. M. Jones.—Filed July 31st, 1867.*

Circuit court of the U. States for the western district of Tennessee.

STEPHEN M. JONES
*vs.*
JOSEPH J. ANDREWS ET AL.

The following deposition of S. M. Jones was taken on the 19th day of July, A. D. 1867, at the office of Humes & Poston, 33 South Court street, Memphis, Tennessee, before Feam Penn, United States commissioner for the district of West Tennessee, by agreement to be read as evidence in the above case on behalf of complainant:

1st quest. Are you the complainant in this case?

Ans. I am.

2nd question. When the written lease was executed by Reed and Bryson to you, of the Commercial Hotel, and you made your notes therefor, was Samuel T. Morgan present, acting as the representative
162 and agent of Joseph J. Andrews? What was done with your notes?

Ans. He was. Mr. Reed, Mr. Morgan, & I elected Mr. Valentine to draw the leise, and I think Morgan went to his room and got the original lease of Andrews to Reid & Bryson to draw the new lease by. Mr. Morgan was present when the lease was executed by Reed & Bryson, and when I made my notes to Reed & Bryson, and they endorsed them. While I was negotiating with Reed for the lease, I consulted with Morgan, and went with him through the house and pointed out some alterations and repairs which I considered necessary. He said Mr. Andrews would do whatever was right, but he was under no obligations by the contract to make them. I also showed him some letters to old Maj. Penn, Mr. Elder, and other gentlemen, from Maj. McEwan, Orville Ewing, & others, of Nashville, introducing me, and after reading them, he said he would be pleased to have the lease made to me. He said the letters were very satisfactory, & he would be
163 pleased to have me take the lease. The lease was drawn and signed, and the notes made by me and endorsed by Reed and Bryson, and carried to the Planters' Bank, and were deposited in the bank to pay the notes of Reed and Bryson as they fell due.

Question. What was the agreement and understanding about the notes, if any, and between whom was that agreement made?

Answer. The agreement was made between Reed and Bryson, and S. T. Morgan as agent of Andrews, and myself. It was, that the notes were made to pay the rent as it fell due to Mr. Andrews; and those notes were endorsed by Reed & Bryson to Morgan, as agent of Andrews, at the time for that purpose.

Question. What do you mean by saying the notes were endorsed by Reed & Bryson to Morgan?

Answer. I mean they were endorsed in bank and delivered to Mr. Morgan, and they were considered the property of Mr. Andrews; and
164 they were placed in the bank, as I understood from them, not to be used except as aforesaid, and upon the order of Mr. Andrews, tho' I was not present when they were put in the bank.

Question. When the fire which in 1862, & consumed a part of the hotel, occurred, with whom, if with any person, did you negotiate as to the time lost by reason of the fire, and what was the negotiation?

Ans. I negotiated with Mr. Joseph J. Andrews in person, he being then in the city of Memphis. I think he contracted with some person

the next day to repair the hotel. He told me to hold on, that he would make the repairs as soon as he could, and that he would make the proper deduction, which he did. He, in person, got the note for one month's rent, and delivered to me, deducting some $400^{00}$, or more, from it, and I paid him in person the balance, and took the note. By mistake,
165 he brought me the note due in April, 1862, instead of the one due in January, 1862. That note I herewith file as Exhibit "A" to this deposition.

*Exhibit "A."*

$625. MEMPHIS, *Sept. 10th*, 1859.

On the first day of April, 1862, after date, we promise to pay to the order of Reed & Bryson, six hundred and twenty-five dollars at the Branch of the Planters' Bank of Tennessee, at Memphis, value received.

STEPHEN M. JONES.
J. C. B. JONES.

*(The above exhibit canceled, and written across:)* Satisfied in full April 4th, 1862.

Endorsed: This is the exhibit referred to in S. M. Jones' deposition, marked A.

S. M. JONES.
FEAM PENN, *U. S. Com'r.*

Question. Has not Mr. Andrews admitted here, during this communication, that he did make this negotiation with you?

Answer. He has, in the last twenty minutes.

Question. How much furniture did you purchase of Reed and Bryson?

166 A. I purchased $5,600^{00}$ worth in the original purchase, and paid them $4,200^{00}$ cash, and a negro boy valued at $1,400^{00}$. I afterwards bought from them an iron safe, the same that is described in Stoddard's & Bryson's deposition.

Question. Have you any means of knowing how much of this purchase was of the old Andrews furniture?

Ans. The Andrews furniture was pointed out by Reed and Bryson to me, but I never attempted to place any estimate on it, for I viewed it as being worth very little. A portion of it pointed out to me was in the servants' room. Mr. Bryson stated to me that he had thrown out a good deal of it; sold some of it to negroes. This he told me at the time of the lease & sale to me.

Question. How much furniture did you buy yourself after getting the lease?

167 Answer. I was buying & fitting up the hotel furniture all the time, from the date of my getting the lease up to within a short time before I left. I had some family boarding with me who furnished their own rooms; and when they came to leave, not being able to pay their board bills, I had to purchase their furniture. Mr. Stickney was one; Mr. A. Hutchins was the 2nd, & the other I can't give his name from recollection. The furniture of these three persons I paid nearly $1,500^{00}$ in their board bills. I can't say accurately or positively, as my books & bills were all left in the hotel, and I have not been able to find them or any part of them. I bought a considerable amount of carpetting from Speed, Donhoe & Strange; I bought $300^{00}$ worth from

A. B. & C. Beech, of Nashville; they are there now, but not in business. I bought from other parties in Memphis, whose names I can't give from memory. I bought a considerable amount of furniture of Mr.
168 Duncan, on Main street, Memphis, and a considerable amount, at different times, of furniture and carpets of M. Casey, of Memphis; and also some from John B. Gilbert, & various other persons. The whole amount, outside of the Reid & Bryson purchase, was not less than $15,000^{00}$.

Question. What was the value of the bar-room ware and fixtures you purchased?

Answer. The man I bought from paid $750^{00}$, I think, for it. I had advanced him $100^{00}$ to buy liquors, and boarded him, & on settlement I took the bar-room ware and fixtures, with a marble-top counter, for five hundred dollars.

Question. Have you examined the schedule made an exhibit to A. M. Stoddard's deposition? If so, is it an accurate inventory of the furniture in the hotel at the time you left in June, 1862?

Answer. I think it is correct, except one room which he neg-
169 lected to inventory; that was the room called the linen room, where the housekeeper stayed. The furniture in that room consisted of a common plain bedstead, three large poplar wardrobes, a washstand, and table. The housekeeper kept the napkins, bed-clothing, sheets, and pillow-cases, bowls and pitchers, & chambers, & such things as were usually kept to supply deficiencies from breakage, &c.

Question. State your knowledge as to the pianos in the hotel and the furniture burnt, and in what rooms & how were they refitted, and how many rooms did you get from Mr. Andrews, after getting the lease from Reed & Bryson, and who refitted them with furniture and at what costs; state about your son's death.

Ans. There was a good piano in the hotel, belonging to the stock I bought from Reid & Bryson, that remained and was there in the parlor when I left in May, 1862. There was another one in the
170 hotel belonging to my widowed daughter Mrs. Marrs. That was there when I left, but my daugh. packed it up and stored it here in Memphis, and after the federal army took Memphis, it was, as I am informed, taken, and I know it is now in the hotel. When the fire occurred in the Commercial Hotel, in the early part of 1862, the kitchen & wo'd-work of the privy was entirely burned, one side of the dining and the inside of each wing of the hotel. Most of the furniture & carpets in fifteen rooms was destroyed. After Mr. Morgan repaired this burning, I then refitted those rooms with new furniture, which I then bought. I don't recollect the cost; the furniture was bought from various parties, & I had in the hotel bills of all the furniture I bought, but have not been able to find since my return. I got nine rooms from Mr. Andrews, in addition to those included in the Reid & Bryson
171 lease, some time, I think, in 1860. I then fitted them up with new furniture and carpets, some of them with very fine furniture. Room 101, called the bridal chamber; No. 102 was small and furniture plain, but the others up to 109 all of fine walnut furniture, except the bridal chamber, which had a mahogany bedstead, bureau, & wardrobe, & washstand, three sets of fine curtains of worsted & bobinet, & carpet, Brussels. My son J. C. B. Jones, I gave an interest in the profits of carrying on the hotel; he had no money and bought none of the furniture; he died single, without lawful issue, and without property, in June, 1863, at Hartsville, Sumner County, Ten. His death was caused by disease contracted in the confederate army.

Question. State your interview with Morgan, in April, 1866.

Ans. In 1866, I visited Memphis, and on my arrival in Mem-
172 phis, I went to Morgan's office with Mr. Bryson, and asked him for the inventory of the plunder of the Commercial Hotel, if he had it. He told me he had it, and would let me see it. He looked among his papers, and in his desk for some time. He pulled out an account of sales, which is Exhibit "C" to his deposition, and handed me, & said he would show me an account of the sale of a part of the plunder of the hotel. Mr. Bryson & I set down to reading that. Morgan took his hat and walked out of the office. We waited there an hour, or something near an hour, waiting for him, and he did not return. I went to his office next morning to see him; he was not there, & I did not obtain another interview with him.

(Saving all objections for the irrelavancy and incompetency of the foregoing deposition, and particularly to those portions of it which are statements from information, the defendant Andrews cross-examines as follows:)

173 Question. Was any writing signed by Morgan when the assignment from Reed & Bryson to you was executed?

Ans. I think there was some sort of an agreement in writing, and, it strikes me, it was recorded, but I cannnot say positively. I do not know who has the writing, or where it is, and I am not positive that there was a writing.

Question. Were the notes of Reed & Bryson to Andrews given up to Reed & Bryson, when Reed & Bryson sold or assigned to you?

Ans. If they were, I did not see it; the understanding in the conversation was that they were to remain in bank as colateral security for the payment of my notes.

Question. Why were your notes not made payable to Andrews?

Ans. Mr. Andrews was not here at the time I bought out Reed
174 and Bryson; Mr. Morgan, his agent, represented. I do not know why the notes were not made payable to Andrews.

Question. Was not it agreed that the notes of Reed and Bryson to Andrews should only be surrendered as your notes were paid?

Ans. I think that was the intention.

Question. How was the note mentioned in your deposition and due 1st of April, 1862, paid?

Ans. My impression is that Mr. Andrews deducted $400^{00}$, in consequence of the fire, and that I paid him the balance in money, but I cannot say certainly that I did pay any money on it.

Question. When did you pay the last rent on the hotel before the note mentioned?

Ans. In December, 1861, I think I made the last payment.

Question. For what reason did you fail to make the payments of the rent notes?

175 Ans. Because I could not make collections; also because all my clerks & sons were forced to go into the confederate army; & further, my servants were impressed by the confederate military officers to work on fortifications.

Question. Do you not know that nobody was forced into the confederate army until after the capture of Memphis, in June, 1862?

Ans. I do not.

Question. Did you not refuse to pay the rent, because Andrews was a citizen of the United States, loyal to its government, and would get the benefit of your payment.

Answer. I did not.

Question. Did you not go to Edmond Parkman and ask him to join you in refusing to pay Andrews' rent?

176 Ans. I did not; I did not talk [to any] to anybody about not paying Andrews' rent because he was a citizen of United States.

Question. Who paid for the repairs on the hotel after the fire, and what am't was paid?

Ans. Mr. Andrews paid for them, but I do not know the amount. He also built a new brick kitchen according to a plan I furnished him.

Question. What additional rent did you pay for the additional rooms in the hotel, gotten by you from Andrews after your purchase from Reed & Bryson?

Ans. For the additional rooms I gave up a portion of the premises included in the lease to Reed & Bryson, being the wash-rooms across the alley, and agreed to pay Andrews about $20^{00}$ dollars per month additional rent.

Question. When did you last pay this additional rent?

177 Answer. In December, 1861.

Question. Did you take any inventory or other description of the property bought by you of Reed & Bryson?

Ans. We went through the hotel, and took a memorandum, and came to an agreement, but I preserved no inventory; the agreement was as stated in my examination-in-chief.

Question. Was not a portion of the payment by you to Reed & Bryson for certain improvements in the hotel which you agreed to pay them for?

Ans. It was not. It was the estimated value of the furniture.

Question. How many of the rooms in the hotel were furnished when you purchased of Reed & Bryson?

Ans. There were several rooms unfurnished, and some of them not plastered when I went into the hotel, but I can't now say how many.

Question. How long had Reed & Bryson been carrying on the

178 hotel when you purchased of Reed & Bryson; and had they been using the same furniture they sold to you?

Ans. I think, as well as I recollect, they had carried on the hotel for about 9 months. They told me they had bought new furniture, carpets, &c., and pointed them out to me, and they were using the same furniture I bought in the hotel at the time of my purchase from them.

Question. Have you ever paid or offered to pay Andrews any rent since December, 1861?

Answer. None, except the note of April, 1862, paid as I have already stated.

Question. What was the value of the carpeting bought by you of Speed, Donohoe & Strange?

Ans. I think it was about $300^{00}$; it might have been $500^{00}$; I cannot say positively.

Question. How much did you buy of Duncan—of furniture?

179 Ans. I reckon I must have bought $1,000^{00}$ worth; it may have been $1,500^{00}$. I have no bills to show.

Question. How much furniture did you buy from M. Cayce?

Ans. I bought from M. Cayce at several different times. I have no bills and nothing to show, but I think I bought about $1,500^{00}$ altogether.

Question. How much did you buy from John B. Gilbert?

Answer. I can't tell the amount, but I should say several hundred dollars' worth.

Question. Can you name any one else from whom you bought furniture, and the amount you bought of them?

Answer. I bought carpeting, table-cloths, musquito-bars, calico for comforts, and cotton batting from Lehman & Co., of Main st., Memphis, to the amount of several hundred dollars at different times. I
180 cannot name any one else; but I bought from several other parties who are not in business now, and I cannot give their names.

Question. Did you or your son ever visit Memphis after June, 1862; if so, when was it?

Ans. I never visited Memphis after 29 May, 1862, until April, 1866. My son was sick in Memphis when I left, and, I understood, remained sick several months, and then went up to Sumner County, where he died.

Question. What percentage of hotel furniture is lost or rendered useless by the ordinary wear & tear of the hotel?

Answer. That depends entirely upon the manner in which the proprietor keeps it. Some men will wear out a set of furniture in a few years so that it will be worthless, while others will keep it repaired, and make it last for several years.

Question. What is the value of second-hand hotel furniture, or
181 such as has been used in the hotel, as compared with new?

Answer. Some second-hand furniture, if it has been properly cared for, would sell a great deal better than furniture of the same wear that had been abused. That that has been properly cared for, the depreciation will be very small; while that that has been abused, the depreciation will be in proportion to the abuse the furniture exhibited.

Question. Will second-hand hotel furniture ever sell for its original cost?

Answer. I cannot say how that is in Memphis.

Question. Have you ever seen sales of second-hand furniture in Memphis since June, 1862?

Answer. I never have.

Question. Did you see or read the lease from Andrews to Reed & Bryson, before or at the time you purchased of Reed & Bryson?

182 Answer. I saw it at the time I purchased, and read it.

Re-examination:

Question. In answer to one of the cross-interrogatories you say a part of the consideration for the lease of the nine additional rooms by Andrews to you was that you gave up the wash-room embraced in the former leases. Who did you make this contract with, and was this change made with the knowledge of Reed & Bryson, or either of them?

Ans. Reed & Bryson knew nothing of it. It was made with Mr. Morgan, as the agent of Mr. Andrews. The wash-room was fitted up then, and rented out to other parties by Mr. Morgan. This wash-room was a detached brick building across the alley not in the same block with the hotel, and had no front on the street.

& further saith not.

S. M. JONES.

183 We waive all objections on account of want of notice, and the formalities of the certificate, caption, and manner of writing down the testimony, and all other mere formalities, but reserve all objections on account of the relevancy and competency of the testimony of the witness, and the competency of the witness.

KORTRECHT & CRAFT,
& W. M. RANDOLPH,
*Sol's for Andrews.*

UNITED STATES OF AMERICA, STATE OF TENNESSEE,
*Dist. of West Ten., City of Memphis:*

I, Feam Penn, United States commissioner for the district of West Tennessee, duly appointed under the laws of the United States to take & certify depositions, administer oaths, &c., to be used in the
184 United States courts, do hereby certify that the foregoing depositions of S. M. Jones was taken before me on the 19th day of July, A. D. 1867, at the place in the caption thereof mentioned; that the examination, responses, and statements of said deponent were reduced to writing in my presence, and by said deponent sworn to & subscribed in my presence, at the time & place aforesaid, and that said defendant is a resident of Augusta, in State of Georgia.

In testimony whereof, I have hereunto set my hand & official seal this 19th day of July, 1867.

[SEAL.] FEARN PENN, *U. S. Com'r.*

Fees, $10.

185 *Deposition of D. Bryson.—Filed Aug.* 26, 1867.

Circuit court of the United States, district of West Tennessee.

S. M. JONES
*vs.*
JOSEPH J. ANDREWS.

Deposition of Davis Bryson, taken the 25th of August, 1867, at the office of Humes & Posten, No. 33 South Court street, Memphis, by agreement.

1 quest. When and how long were you in the Commercial Hotel during the lease of S. M. Jones, and in what capacity?

Ans. I was there from the first of January, 1860, to the first of August, 1861, as clerk of the house, in the employ of Mr. Jones.

2 quest. State in what condition, as to repairs, he kept the house while you remained there.

186 Ans. During the whole time I was there he continued from time to time to make such repairs as were or became necessary, and I know he kept the house in very good repair while I remained.

3rd ques. Do you remember of his permitting any part of the house to become injured or to remain out of repair?

Ans. I cannot; he kept a very good hotel & everything in very good order.

Cross-examined for J. J. Andrews:

Quest. 1st. Do you know anything of the repair the house was in when Andrews regained possession of it, in the summer or fall of 1862?

Ans. I do not; I know of its repair after I left there in August, 1861.

D. BRYSON.

Affidavit waived, & parties assent that this deposition may be read on trial of this cause.

HUMES & POSTON,
*Sol'rs for Jones.*
KORTRECHT & CRAFT,
*Att'ys for Andrews.*

187 *Deposition of H. W. Bryson and A. M. Stoddard.—Filed Sept.* 17 1867.

In equity in the U. S. circuit court for the district of West Tennessee.

STEPHEN M. JONES.
*vs.*
JOSEPH J. ANDREWS.

The deposition of H. W. Bryson and A. M. Stoddard.

Quest. 1st. Please state your knowledge of the condition S. M. Jones kept the Commercial Hotel during his lease; whether he permitted it to be and remain out of repair, or did he keep it in good repair.

Ans. He kept it in very good repair, and done a great deal of repairs to it; I was there nearly every day; he laid a new floor in the veranda all round the house, & he also had the office painted.

H. W. BRYSON.

Ans. I was there as clerk in the hotel from September, 1861, to the termination of his occupancy of the house, & longer, & during
188 that time he almost built new the porches and verandas; he kept the whole house, in every part, in most excellent repair; he was particular about every lock & hinge & nob, & everything; he noticed and repaired constantly everything.

A. M. STODDARD.

The above deposition taken by agreement, on the part of compl't in above case, at Humes & Poston's office, Sept. 9th, 1867; all objections except for competency & relevancy waived.

HUMES & POSTON,
*Sol'rs for S. M. Jones.*
KORTRECHT & CRAFT,
*For Andrews.*

189 *Deposition of Jos. J. Andrews.—Filed July,* 1867.

In the circuit court of the United States for the district of West Tennessee, in chancery.

STEPHEN M. JONES
*vs.*
JOSEPH J. ANDREWS AND OTHERS.

The deposition of Joseph J. Andrews, one of the defendants in the above cause, taken by consent, to be read as evidence in the above cause, subject to all just & legal objections for relevancy and competency.

The said witness, being first duly sworn, testifies as follows:

Q. What is your name, age, and place of residence; and what is your relation to this suit?

190 Answer. Joseph J. Andrews; I reside in New York City; am 66 years of age; and am one of the defendants.

Question. Please examine "Exhibit A" to your answer in this cause, and state all you know about it.

Answer. I have examined the paper referred to; it is a copy of a lease of the Commercial Hotel in the city of Memphis, made by me to my co-defendants, Reed & Bryson.

Question. What length of time did the defendants Reed & Bryson occupy the hotel under this lease, and what disposition did they make of it?

Answer. They occupied it about 8 months, and, while I was in New York, they rented it out to another party, whom I understood to be S. M. Jones & Son.

Question. Did you ever see the lease from Reed & Bryson to S. M. Jones & Son?

191 Answer. I never did.

Question. If S. M. Jones & Son occupied the hotel after their lease from Reed & Bryson, state how long they did so, and how they came to vacate it, and when this was.

Answer. It was three months after the sublease was made; I visited Memphis, and found S. M. Jones and Son in occupation of the hotel; I cannot say how long they remained in the hotel, but I was in Memphis for some time before they left it; I was in Memphis when S. M. Jones and his son left the hotel in charge of Mrs. Jones to go south; this was about January, 1862, as well as I recollect; it was during the war, and before the occupation of Memphis by the U. S. military forces, which was on the 6th June, 1862. Mrs. Jones remained in the hotel until August or September, 1862, when about 6 of the rent notes for the hotel were due and unpaid, and then I directed my agent,

192 Samuel F. Morgan, to give her notice to leave the hotel.

Question. Who occupied the hotel after it was vacated by S. M. Jones & Son; how long did the said parties so occupy, and at what rent?

Answer. I was in Memphis about February, 1863; I found parties in occupation of the hotel; I do not remember their names; the hotel had been rented to them by Mr. Morgan as my agent; the rent paid by them was merely nominal, and I do not remember the amount of it; the object was to get some one to take care of the "hotel;" they remained in the hotel two or three months.

Question. Who occupied the hotel after the above-mentioned parties, and how long, and for what purpose?

Answer. While the parties above referred to were in occupation of the "hotel," it was seized by the United States naval authoritys for

193 a hospital, and so occupied by them until the 1st of August, 1865, when, by order of the Navy Department, it was returned to me.

Question. What furniture had the Commercial Hotel when you leased it to Reed and Bryson, as above stated, and what was the character and value of the furniture, as well as you can give them?

Answer. The rooms in the hotel were all furnished, with the exception of some rooms which had not been plastered, and which I agreed Reed and Bryson might use if they would plaster. The dining-room was also furnished with nice mahogany tables, and other furniture, except that some crockery may have been wanting; the kitchen, also, had the necessary articles of furniture. The hotel was so well furnished that Reed and Bryson, immediately upon their arrival (I was present at their arrival), went on to keeping the hotel, having a large number of

194 boarders, and using only the furniture they found in the hotel. The furniture of the hotel was good and substantial furniture, but there was nothing fancy. I consider fancy furniture—lace curtains, &c.—as entirely out of place in the hotel, and have not provided any. The furniture in the hotel had cost me between eleven and twelve thousand dollars; the first purchase I made was between ten & eleven thousand dollars, and I afterwards bought other furniture to the amount of about one thousand dollars.

Question. How often were you at the "hotel" while it was kept by Reed & Bryson; and how long at a time?

Ans. I was not there after I first saw them go into the occupation of it; the next time I was there S. M. Jones & Son were occupying it.

Question. How often & how long were you in the hotel while S. M. Jones & Son kept it?

195 Answer. I suppose I was there two or three times; but I do not recollect the exact length of time I remained there.

Question. Did you notice the furniture in the hotel when you were there, at the times you have mentioned; if so, what sort of furniture was it, and how did it compare with the furniture in the hotel when you leased to Reed & Bryson?

Answer. I occupied a room in the hotel on the occasions mentioned, and the furniture in it appeared to be precisely the same that was in the room when I leased it to Reed and Bryson; but I did see, in some of the rooms, furniture which I thought had been exchanged for furniture in the "hotel" when I leased it, which I missed. Some of the new furniture which I saw in the "hotel" was rather fancy, such as lace curtains, &c., which were getting much soiled and damaged from the dust and

196 sun, and had not been up but a short time. The piano in the parlor was the same I had left in the hotel when I leased it. I noticed the room of Mrs. Marrs, the daughter of Mr. Jones, the plaintiff, which was very nicely furnished, and in which she had a piano of her own. This piano is now in the hotel, and I have told Mr. Jones he can have it, so far as I have any claim. The mass of the furniture was mixed, some new and some old, and was about like that left in the hotel when I leased it. I saw Reed, soon after the lease of the hotel, buy some cotton carpeting for use in it, which was altogether unfit for the purpose.

Question. Did you notice the furniture in the hotel in June, 1862, or shortly before or after that time; if so, what was its character?

Answer. I noticed it about the time referred to, and it appeared to be very much the same quality of furniture that had been in the

197 hotel when I leased to Reed & Bryson; there may have been some changes, as furniture in a "hotel" has often to be renovated.

Question. Do you know anything about an iron safe in the hotel? If so, state what became of it.

Answer. There was a large iron safe in the hotel. I do not remember that there was any there when I leased the hotel. One morning, after Mr. Jones had gone south, as well as I recollect, I saw some men taking it out of the hotel, and, upon inquiry, I was informed by one of the men that he was a deputy sheriff; that the safe had never been paid for, and that he taking it under process in his hands.

Question. Do you know what became of the furniture in the hotel when Mrs. Jones was notified to leave it? If so, please state.

Answer. I do not know of my own personal knowledge what

198 became of the furniture, except the piano which was in the "hotel" when I leased it to Reed and Bryson. This piano Mr. Morgan, my agent, had removed out of the hotel, and I afterwards sold it for $200^{00}$, which was paid me. The United States government also paid me for the furniture mentioned in Exhibit "B" to S. F. Morgan's deposition in this case. I was also paid for the furniture mentioned in Exhibit "C" to the deposition of said Morgan. The prices I was paid are shown by these exhibits, respectively. I never had any other of the furniture in the hotel removed or sold, nor did I ever direct the sale or removal of any other furniture from the hotel, nor did I ever receive anything whatever for any of the said furniture except what is shown by the said exhibits.

Question. What furniture was left in the hotel when returned to you by the U. S. naval authorities?

Answer. Not one single thing. Everything they had in the
199 hotel was sold at public sale, and only the bare building returned to me.

Question. What was the condition of the hotel when leased by you to Reed & Bryson?

Answer. When I leased the hotel it was in excellent repair, and, as will be seen by reference to the lease, they agreed to keep it in good repair. But this part of the contract was never observed, either by Reed and Bryson or by S. M. Jones & Son; but they permitted the hotel to wreck & waste to such an extent that it would have cost me $7,000^{00}$ or $8,000^{00}$ to have put the hotel, when Mrs. Jones left it, in the same condition it was in when I leased it to Reed and Bryson.

Question. What deductions, if any, did you make on the rent of the hotel while it was in the occupation of S. M. Jones & Son? On what account did you make the deductions?

Answer. About November, 1861, there were six rent notes due
200 and unpaid, or about that number. Times were hard, and I told Mr. Jones, if he would take up the unpaid notes then, and promise to pay the notes thereafter punctually, I would deduct an amount on the notes equal to about $2,000^{00}$. He accepted the proposition, and paid the balance on the notes, less the deduction. The amount of the notes was probably about $3,500 or $3,800^{00}$. Shortly after that there was a small fire in the hotel, and on account of it I either gave up one of the rent notes, or deducted four or five hundred dollars on it.

Question. What repairs, if any, did you put on the hotel while it was occupied by Jones and Son; and at what cost to you?

Answer. When the fire occurred, I repaired the damages done to the amount of $2,500^{00}$; but the amount was paid me by the insurers.

Cross-examination:

1st question. To whom, and at what price, had you leased the hotel before you leased to Reed and Bryson?

201 Answer. I don't remember both the parties, but one of them was a Mr. Tyler; they had it but a very short time—some two months; they bought out a Mr. Mitchel; I have no idea at what rate. Just before them I leased to a Mr. Mitchel, when the hotel was much smaller than when leased to Reed & Bryson. I built a large four-story addition before I leased to Reed and Bryson. I had leased to Mitchel at some three or four hundred dollars a month; how long he had it I don't know. Col. Cockrell, of the Guyoso, had it before Mitchel, but I don't remember the rate; he sold out to Mitchell.

2nd question. How many rooms were in the new addition you speak of having added when you leased to Reed and Bryson?

Answer. My memory don't serve me, but it is the part on Front Row, over the 3 or 4 stores. Reed and Bryson were the first who occupied it. I am under that impression. Many of the rooms were finished, & some not finished, when Reed & Bryson went in.

202 Question. Did you not, after Jones took the property, make him an additional lease of nine rooms?

Answer. At his request I made a change, by which he gave up the wash-room across the alley, as he said it was no use to him; and I let him have some additional rooms, some 8 or 10, and he paid a difference.

Question. From whom an when did you buy the furniture you let Reed and Bryson have?

Answer. I don't recollect the time, but it was from a tenant named Shawl, who wished to quit the business. The furniture was valued by disinterested parties between $10,000 and $11,000$^{00}$, and I took it at that valuation. Afterwards I purchased some additional furniture, but not to any extent—probably from $500$^{00}$ to $1,000$^{00}$.

Question. Did Shawl occupy the hotel before or after Col. Cockrell?

Answer. Before.

203 Question. Had Col. Cockerel & the several tenants between him & Reed and Bryson occupied the hotel & use the furniture successively?

Answer. They did; but they put in additional, & took some out.

Question. What year did Shawl quit?

Answer. Somewhere near twelve years ago.

Question. Did you object to Jones getting the lease from Reed & Bryson?

Ans. I did not know it when it was done; and when I came to Memphis I said nothing about it. Mr. Morgan had been attending to my business, since 1844, and whatever he did I didn't object to in that way.

Question. Were you in Memphis when the fire occurred in the hotel, in the early part of 1862?

Answer. I was at Germantown or Somerville, Tennessee, 15 to 50 miles from Memphis. I came to town a short time afterward.

204 Question. Did you not tell Mr. Jones that you would repair immediately and make the proper deduction; and did you not do so?

Ans. I did so; and I might have told him, but I do not recollect whether I did or not. I made a deduction of $400$^{00}$, or give him one of his notes. In a very short time the place was put in perfect order.

Question. Do you remember in how many rooms the furniture was burnt out?

Answer. No, I don't; there were very few that were injured much.

Question. Did you consider the monthly rent which Reid & Brothers agreed to pay you a high rent, a reasonable rent, or a low rent?

Ans. I considered at a fair rent, inasmuch as they were to keep the house in perfect order from roof to cellar, and, in consideration of their doing so, they were to have what furniture of mine remained in the hotel at the expiration of the lease, provided they paid all rents—which they failed to do.

205 Question. Do you say that the hotel was in perfect repair when you leased to Reid & Bryson?

Ans. It was in good repair.

Question. Were all the rooms in good repair, including the dining-room & kitchen, at that time?

Answer. I think so, with very few exceptions; there may have been some plastering knocked off in the rooms.

Questions. Did you allow Reed & Bryson any credit, or Jones any credit, for the furniture you took when Mrs. Jones was ejected from the house?

Ans. I did not, as I did not consider that they were entitled to any, as I regarded the furniture as mine.

Question. Did you not instruct Mr. Morgan to take possession of the hotel and the furniture, as yours, in August, 1862?

Ans. I don't remember the contents of that letter, but I aimed to get my own, & let Mrs. Jones have what she claimed.

206 Question. Did you object to Mr. Morgan's having taken the hotel & furniture, when you heard it?

Answer. I made no objection.

Question. When Mr. Jones' deposition was to be taken, did he not go to your room and request you to be present?

Answer. Yes, sir; he asked me to step over, he would like me to be present. I begged to be excused, but, inasmuch as he asked it, I went.

Question. Did he not inform you that he was compelled to go home, & would like for you to have your deposition taken so that he might be present, and you declined?

Answer. I told him I would like him to be present; but I had a previous engagement to go out of town, & had fixed the time to this morning, and he declined to wait. And further saith not.

Question. Did you ever see an inventory, made by Stoddard, of the furniture in the hotel in August, 1862, under Morgan's instructions?

207 Answer. I have no recollection of seeing such an inventory, and have no knowledge of it.

JOS. J. ANDREWS.

UNITED STATES OF AMERICA, STATE OF TENNESSEE:
*District of West Tennessee, City of Memphis:*

I, Feam Penn, United States commissioner for the district of West Tennessee, duly appointed under the laws of the United States to take and certify depositions, &c., to be used in the United States courts, do hereby certify that the foregoing deposition of Jos. J. Andrews was taken on the 25th day of July, A. D. 1867, at office of Kortrecht & Craft, in the city of Memphis, and by said witness sworn to and acknowledged before me on same day and date.

In testimony whereof, I have hereunto set my hand and official seal this 25 July, A. D. 1867.

[SEAL.] FEAM PENN, *U. S. Commissioner.*

208 Fees $10.

We agree that these depositions may be read in evidence, subject only to exceptions as to competency & relevancy.

KORTRECH & CRAFT,
*For Andrews.*
HUMES & POSTON,
*Sol's for Complain't.*

209 *Deposition of Sam'l T. Morgan.*

UNITED STATES OF AMERICA, *District of West Tennessee:*

STEPHEN W. JONES
*vs.*
JOSEPH J. ANDREWS, P. REED, & H. W. BRYSON. } Injunction bill.

Pursuant to the annexed notice, I, Isaac Morrison, a commissioner of the United States circuit court for said district, have, at the request of W. M. Randolph, solicitor for said Andrews, proceeded to take the deposition of Samuel T. Morgan at the office of the clerk of the circuit court of the United States for the district of West Tennessee, in the city of Memphis, on this the 28 day of February, 1867, between the hours of 9 o'clock a. m. and 5 o'clock p. m., to be read as evidence on behalf of said defendant on the trial of said cause.

The said Samuel T. Morgan, being by me duly sworn, deposes and says as follows, to wit:

210 Quest. 1. Please state whether you know the parties to this suit, and how long you have known them.

Ans'r. Since December, 1858, I have know Reed & Bryson, and Jones since Sept., 1859, and Andrews since April, 1844.

Quest. 2. What have been your business relations to the defendant Andrews since the beginning of the year 1858?

Ans. I have acted as his agent in this city, rented his houses, and collected his rents since 1856.

Quest. 3. Are you not the same Sam'l T. Morgan mentioned in the pleadings in this cause?

Ans. I am.

Quest. 4. Are you acquainted with the premises in the city of Memphis belonging to the defendant Andrews, and known as the Commercial Hotel?

Ans. I am.

Quest. 5. Examine the paper now shown you and make it a part of your deposition, and state what knowledge you have of it, and
211 whether the premises were occupied under it, by whom, and how long.

Ans. I have examined the paper above mentioned, and find it to be a copy of the lease on the Commercial Hotel in this city, executed by Jos. J. Andrews to Reed & Bryson on the 29th day of December, 1858, for five years from the first day of January, 1859. I make said paper "Exhibit A" to my deposition. I had the original in my possession for several years after it was recorded. The premises in question were occupied by Reed & Bryson from January 1st, 1859, till some time in September of the same year, when they transferred or re-leased to S. M. Jones.

Quest. 6. How was the Commercial Hotel furnished when leased by Andrews to Reed & Bryson?

Ans. It was furnished in the style in which it had been furnished for several years; was open for boarders and transient customers as
212 it had been for the last three or four proprietors, and there was in the house all such furniture as was requisite for conducting the business of the house; and for the month of December, 1858, was conducted by Mr. Andrews himself, who was then in this city.

Quest. 7. Were the notes given by Reed & Bryson to Andrews for the rent of the hotel paid as they became due, or have all of them yet been paid; and, if not, how many are unpaid?

Ans. The notes given by Reed & Bryson to Jos. J. Andrews for rent of said hotel were paid by them up to August 12, 1862, with the exception of the notes for the rent of seven (7) months & twelve days. These last-mentioned notes were not paid at maturity, nor have they been yet paid, and are the same notes referred to in the pleadings in this cause, and for which the judgment mentioned was rendered.

213 Quest. 8. State what was done or said by the defendant Andrews, or by you as his agent, in regard to the transfer or underletting of the Commercial Hotel by Reed & Bryson to the plaintiff Jones.

Ans. My consent to the transfer of the lease to Reed & Bryson to said Jones was given as the agent of Jos. J. Andrews, either verbally or in writing, but in giving said consent I did not agree to surrender the notes of Reed & Bryson for rent, to them or any one else, and the notes of Jones to Reed & Bryson for rent under their transfer were never transferred or delivered by said Reed & Bryson to Jos. J. Andrews or to me as his agent, and were deposited in the Branch Planters' Bank then in this city, by said Reed to his own credit, and not to the credit of Jos. J. Andrews. The notes of Reed & Bryson to Jos. J. Andrews were deposited by him in the same bank for collection, where said An-

drews kept his account. The notes of Jones to Reed & Bryson
214 corresponded with the notes of Reed & Bryson to Jos. J. Andrews, from the date of Jones taking possession of said hotel, and by the instructions of said Reed the amount of each note of Jones to them when paid should be placed to the credit of Jos. J. Andrews, in payment of their note to him for the same amount and date, and was so done till said Jones ceased to pay his notes.

Quest. 9. Where does the defendant Andrews reside, and where has he resided for the last 10 years, and how often and when was he in Memphis between June, 1861, and December, 1862?

Ans. In the city of New York, and was in Memphis in June, 1861, and also from September, 1861, to July, 1862, was in Memphis & vicinity, and also for two or three weeks in November and December, 1862.

Quest. 10. When Jones first ceased paying his notes to Reed & Bryson, did he give any reason for his not paying the same; and, if he did, what was the reason given?

215 Answer. The reason assigned to me, which I now recollect distinctly, was that Mr. Andrews lived in New York City, and to pay his notes for rent which would enure to the benefit of said Andrews, would be giving aid to the enemies of the Confederate States. I have no recollection of his assigning any inability to pay them, and up to the time that he ceased to pay them he had always been very prompt in taking them up.

Quest. 11. Do you know anything of a fire that occurred at the Commercial Hotel in the early part of the year 1862? If so, state what injury the fire did, how long it required to repair the damage, and what Andrews did with Reed and Bryson in consequence of the said fire.

Ans. A fire occurred in the kitchen of the hotel on the 2d or 3rd of March, 1862, which resulted in its complete destruction. Mr. Andrews was in the city on the morning of the fire, and proceeded imme-
216 diately to have a [a] new one built of brick, the old one being of wood. Its erection required a month or more of time, and in consideration of the inconvenience resulting to the hotel from that cause, Mr. Andrews deducted from the note of Reed and Bryson maturing on the ¼ April, 1862, $400 or $425. And the furniture inside the hotel was not, so far as I know, injured to any extent whatever.

Quest. 12. What did the plaintiff, Jones, do on the approach of the army of the U. S. to the city of Memphis, in June, 1862?

Ans. Before that time he had left Memphis and did not return till about one year ago, and left the hotel in charge of his son and wife.

Quest. 13. Was any rent paid on the hotel to Andrews after June, 1862, or was there any offer by any one to pay rent?

Answer. There was not, nor was any offer made by any one to pay rent.

217 Quest. 14. When and how did you take possession of the hotel for Andrews, and what was your reason for doing so?

Ans. In August, 1862, in consequence of the non-payment of rent, Mr. Andrews, by letter, instructed me to take possession of the hotel, close it up, or re-rent it. On receiving his instructions, I proceeded alone to the hotel, saw Mrs. Jones, wife of the plaintiff, and informed her of the orders I had received from Mr. Andrews, and notified her verbally that I would proceed to execute the orders of Mr. Andrews; and stated to her very distinctly, that I knew that when the hotel was rented to Reed and Bryson the furniture therein was the property of Jos. J. Andrews, and had no knowledge of any other furniture that might have been put into

the hotel since that time; and therefore requested her not to interrupt or remove any portion of said furniture till the claim of Reed & Bryson for rent had been settled satisfactorily to said Andrews.

218 Mrs. Jones, in a few days, left the house with such of her family as were here.

Quest. 15. What furniture did Mrs. Jones take from the hotel; what did she leave there; and when and how was the furniture left in the hotel disposed of; and who received the benefit of the proceeds of the same?

Ans. I am unable to describe the furniture which Mrs. Jones took from the hotel, further than that it was the best portion of the furniture there. The furniture which she left there is shown by Exhibit B and Exhibit C to my deposition, except a few articles sold by me privately, amounting to $42, which I paid to the owner of the furniture car which was used in hauling the furniture sold at auction from the hotel to the place of sale near the corner of Second and Madison sts. The furniture left by Mrs. Jones in the hotel was protected by Mr. Stoddard, who, at my request, remained there till the 1st of

219 November or December, 1862, when the house was rented to some one whose name I cannot now recollect, and who, with his successors, remained there 'til some time in March, 1863, when the house, with all of its contents, was seized by the naval authorities of the U. S. for a naval hospital. After seizing the hotel, certain of the furniture left by Mrs. Jones, was taken possession of by said naval authorities for the use and benefit of said naval hospital, a list of which, and of the prices paid for the same, may be seen by reference to Exhibit B, hereto attached; and the furniture rejected by the naval authorities, was turned over to me as the agent of Joseph J. Andrews, and I had the same sold at auction by W. H. Passmore & Co., and the proceeds I paid over to Jos. J. Andrews. A list of the articles sold by W. H. Passmore & Co., and the prices realized are shown by "Exhibit C," hereto attached.

220 Quest. 16. How dow you know Mrs. Jones removed furniture from the hotel?

Ans. I saw the furniture car at the door of the hotel repeatedly, being loaded with the furniture in the hotel; one load of which I saw being unloaded one evening, on going home, and being deposited in a house on the west side of Second street, a short distance above where I lived then and live now.

Quest. 17. Did all the furniture specified in Exhibits B and C, and the small lot sold by you, belong to the defendant Andrews, or to the plaintiff?

Ans. Said furniture did belong to Jos. J. Andrews, though Reed & Bryson claim the iron safe, valued, in Exhibit B, at $100, though I know nothing of the justice of their claim.

Quest. 18. Do Exhibits "B" and "C," and the small lot of furniture sold by you, comprise all the furniture that was in the hotel when leased by Andrews to Reed and Bryson?

221 Ans. I am not able to answer positively, but don't think they do; but they comprise all the furniture that was in the hotel when taken possession of by the naval authorities, or that had been there since Mrs. Jones ceased moving the furniture in 1862.

Quest. 19. Did Andrews, or you as his agent, ever remove any furniture from the hotel after Mrs. Jones left it, or ever sell any furniture out of the hotel until after it was taken possession of by the naval authorities?

Ans. Not a single article.

Quest. 20. Did you find any bar-room furniture in the hotel after Mrs. Jones had left it?

Ans. None whatever, or if there was any such furniture, it will be found on one or both of the lists "B" & "C."

Quest. 21. What means were used to put Mrs. Jones out of the hotel at the time you have mentioned above?

222 Ans. Nothing was done but my simply stating to her that my orders from Mr. Andrews were to take charge of the house, and that I was simply to request her to procure other quarters, which she, in some few days, did.

Quest. 22. Who delivered the notes of Jones to Reed & Bryson to Reed; and why and when was this done?

Ans. They were delivered to me by the officers of the Branch Planters' Bank on its removal from here in 1862, and were preserved by me, along with the notes of Reed & Bryson to Mr. Andrews. I delivered said notes to P. Reed on his demanding them of me as his property, after Mr. Andrews had instituted suit against Reed & Bryson.

And further this deponent sayeth not.

SAMUEL T. MORGAN.

223 UNITED STATES OF AMERICA,
*District of West Tennessee:*

I, Isaac Morrison, a commissioner of the United States circuit court or the said district, do hereby certify that the foregoing deposition of Samuel T. Morgan was taken before me on the day and at the place in the caption thereto mentioned; that the same was reduced to writing by said witness, and, after being read over by him, he signed the same in my presence, he having been previously duly sworn by me. I further certify that I am not of kin or counsel to either of the parties to said suit, nor in any manner interested in the event of the same.

Witness my hand and official seal this 28th day of Feb'y, 1867.

[SEAL.] ISAAC MORRISON, *U. S. Comm'r.*

224 In chancery in the circuit court of the United States for the district of West Tennessee.

STEPHEN W. JONES
*vs.*
JOSEPH J. ANDREWS, P. REED, AND H. W. BRYSON. } Injunction bill.

The plaintiff will take notice that we will take the deposition of Samuel T. Morgan at the office of the clerk of the circuit court of the United States for the district of West Tennessee, in the city of Memphis, on the 28th day of February, 1867, between the hours of 9 o'clock a. m., and 5 o'clock p. m., when & where you may attend & cross-examine. The taking of the said deposition, if not completed on the day appointed, will be continued from day to day until the same is completed, between the same hours, and at the same place.

W. M. RANDOLPH,
*Sol. for Andrews.*

I acknowledge service of this subpœna Feb'y 22, 1867.

W. Y. C. HUMES,
*Sol. for Compl't.*

225 "Exhibit A" to my deposition in case of S. M. Jones v. Jos. J. Andrews.

(Signed) SAMUEL T. MORGAN.

This indenture of lease, made & entered into this 29th day of December, A. D. 1858, by and between Joseph J. Andrews, of the one part, and P. Reed and H. W. Bryson of the other part, witnesseth: That the said Joseph J. Andrews do hereby lease to said parties of the second part, for the term of five years from the first day of January, 1859, until the 1st day of January, 1864, the Commercial Hotel, in the city of Memphis, and the third and fourth stories of the new building over the three stories fronting on Front Row. & the said Andrews, upon his part, agrees that if any of the furniture now in said hotel shall be taken out by D. Cockerell, or any other persons authorized by him, the same is to be valued by two disinterested persons, to be selected by the parties; and if they cannot agree they may select one umpire. The judg-
226 ment & value set upon said property (when so taken out) by any two, shall be binding upon the parties to these presents. And after ascertaining in this way the value of said old furniture so taken, the said Andrews agrees to expend and lay out the worth thereof & like sum in the purchase of other furniture to be put in said Commercial Hotel. And the said Andrews further agrees, that should s'd hotel be destroyed by fire during this lease, and the same shall not be caused by negligence or carelessness of the parties of the second part, or either of them, or their agents, then & in that case the said parties of the second part is to pay rent up to the time such loss may occur. And the said party of the first part is to deliver to the said parties of the second part such notes as may be falling due after said loss, & for which no
227 consideration is received by the said parties of the second part. And the said Andrews further agrees, that whatever furniture may be in said hotel, belonging to him, at the end of this lease, shall become the property of the parties of the second part; provided the rules hereinafter mentioned shall be punctually paid, and the hotel kept in good order from roof to cellar. For and in consideration of which, the said parties of the second part have this day executed to the party of the first part, or order, their joint & several notes or bonds, payable at the branch of the Planters' Bank of Tennessee, at Memphis, in the following sums, & falling due at the following times, to wit: Five hundred dollars, payable on or before the first day of February, 1859, and the like sum payable on the first day of each and every month thereafter until the first day of January, 1861; the sum of six hundred
228 and twenty-five dollars, payable on or before the first day of Feb'uary, 1861, and the like sum payable on the 1st day of each and every month thereafter until the expiration of this lease. And the said second pa.ties further agree to finish off, in a good, substantial manner, into rooms suitable for an hotel, during the first two years of this lease, the third and fourth stories in the new building hereinbefore referred to; which shall not be removed or taken away, but shall enure to the benefit of the said party of the first part. And the second parties further agrees to keep said hotel in good repair during said time, and at the expiration thereof to deliver the same up to the said party of the first part in good repair. And the second parties further agrees not to rent out or sublet the bar in said hotel without the written consent of the said party of the first part. Nor shall the said parties of
229 the second part, at any time during this lease, rent out or sublet s'd hotel, or any part thereof, except the barber shop and the newspaper and cigar stands, without the written consent of the said party of the first part. & in case of failure of said parties of the second part to meet the payment of the notes or bonds hereinbefore mentioned, or either of them, at maturity, the said party of the first part, at

his option, may immediately take possession of said hotel, furniture, &c., and declare this lease forfeited, without demand and notice. But in case of sickness or indisposition of the second party at the time any of said notes may fall due, the said party of the first part shall not ten days thereafter enforce the forfeiture herein secured to the said party of the first part. And it is further understood that the present wash-house is embraced in this lease as an appurtinant to said Com-
230 mercial Hotel, which the said party of the second part may use or rent out for some respectable purpose. And they, the second party, have the privilege of altering the kitchen or making such improvements thereto as they may think proper, not to the injury of said hotel.

In testimony whereof, we have hereunto set our hands and seals, in duplicate, this day & date first above written.

JOS. J. ANDREWS. [SEAL.]
H. W. BRYSON. [SEAL.]
P. REED. [SEAL.]

Witness present:
H. VOLLENTINE,
R. H. JOHNSON.
J. H. H., *Ja'a'y* 3, '59.

231

STATE OF TENNESSEE, *County of Shelby:*

Personally appeared before me John P. Trezevant, clerk of the county court of said county, H. Vollentine & R. H. Johnson, the subscribing witnesses to the foregoing lease, who, being first duly sworn, depose and say that they are acquainted with Jos. J. Andrews, P. Reed, and H. W. Bryson, the bargainers to the same, and that they acknowledge the execution of the same in their presence, for the purpose therein contained, on or about the day it bears date.

Witness my hand at office, January 3rd, 1859.

JOHN P. TREZEVANT, *Clerk*,
By JOHN H. HARRISON, *D. C.*

232

STATE OF TENNESSEE, *Shelby County:*

The hereto attached lease was filed in my office for registration on the 14th day of March, 1859, at 9 o'clock a. m., and so noted in note-book No. 4, page 93, and was duly recorded on the 5th day of April, 1859.

HENRY LAKE, *Register.*

STATE OF TENNESSEE, *Shelby County:*

I, Chas. W. Johnston, register of said county, do hereby certify that the foregoing is a full, true, and perfect copy of the original thereof, of record in my office in book No. 37, pages 183, 184, & 185. Witness my hand, this 26th day of July, 1865.

CHAS. W. JOHNSTON, *Register*,
By E. J. COMSTOCK, *D. R.*

233 Exhibit B to my deposition in case of S. M. Jones v. Jos. J. Andrews et als.

SAMUEL T. MORGAN.

MEMPHIS, TENN., *June 5th*, 1864.

*U. S. Navy Department, per U. S. naval hospital "Pinkney," to Joseph J. Andrews,*

DR.

List of furniture taken for the use of the U. S. N. hospital Pinckney, Memphis, Tenn., appraised by T. H. Benton, A. A. paymaster, in behalf of the government, and Daniel Aimes, on the part of Joseph J. Andrews, owner of the furniture.

| | | | |
|---|---|---|---|
| 1 | Brussels carpet | 20 00 | |
| 1 | marble-top table | 6 00 | |
| 2 | arm-chairs | 10 00 | |
| 3 | sofas | 25 00 | |
| 2 | looking-glasses | 30 00 | |
| 3 | curtain fixtures | 9 00 | |
| 1 | marble-top table | 12 00 | |
| 2 | carpets | 30 00 | |
| 2 | bedsteads | 12 00 | |
| 10 | chairs | 15 00 | |
| 2 | bureaus | 16 00 | |
| 1 | wardrobe | 10 00 | |
| | 2 washstands | 2 00 | |
| 234 | 1 table | 2 00 | |
| | Bedding for two bedsteads | 50 00 | |
| 1 | carpet | 10 00 | |
| 1 | bureau | 6 00 | |
| 2 | chairs | 2 00 | |
| 1 | table | 1 00 | |
| | Bedding | 20 00 | |
| 1 | carpet | 8 00 | |
| 1 | sofa | 2 00 | |
| 1 | looking-glass | 15 00 | |
| 1 | bed & bedding | 30 00 | |
| 1 | wardrobe | 12 00 | |
| 3 | chairs | 1 50 | |
| 1 | table | 2 00 | |
| 1 | washstand | 4 00 | |
| 1 | wardrobe | 10 00 | |
| 1 | bureau | 8 00 | |
| 1 | table & washstand | 6 00 | |
| 3 | chairs | 2 50 | |
| | Am't carried over | | 389 00 |
| | 2d p. continued; am't bro't over | | 389 00 |
| 1 | looking-glass | 15 00 | |
| 2 | beds and bedding | 20 00 | |
| 1 | bureau, 1 table, 1 washstand, 1 looking glass | 8 00 | |
| 3 | chairs | 2 50 | |
| 1 | wardrobe, 1 bureau | 15 00 | |
| | 3 wardrobes | 25 00 | |
| 235 | 1 bedstead and bedding | 15 00 | |
| | 1 table & washstand | 2 00 | |
| 1 | bedstead & bedding | 12 00 | |
| 4 | chairs | 3 50 | |
| 1 | washstand | 1 00 | |

| | | | |
|---|---|---|---|
| 1 wardrobe | | 6 00 | |
| 1 looking-glass | | 2 00 | |
| 2 chairs | | 2 00 | |
| 30 sheets, 12 counterpanes | | 30 00 | |
| 6 extension tables | | 40 00 | |
| 5 round do. | | 5 00 | |
| 23 chairs | | 17 25 | |
| 1 stove & pipe | | 20 00 | |
| 1 " & do. | | 8 00 | |
| 3 desks, 1 letter-press, 1 gong | | 12 50 | |
| 1 table | | 1 00 | |
| 21 small tables | | 31 50 | |
| 14 washstands | | 28 00 | |
| 13 do. | | 9 75 | |
| 12 bedsteads | | 60 00 | |
| 18 bureaus | | 144 00 | |
| 48 chairs | | 36 00 | |
| 18 arms-chairs | | 18 00 | |
| 11 husk mattrasses | | 25 00 | |
| 11 cotton do. | | 88 00 | |
| 73 pillows | | 73 00 | |
| 11 bolsters | | 22 00 | |
| 3 tables | | 15 00 | |
| 1 bedstead | | 8 00 | |
| | | | 822 00 |
| Am't carried up | | | $1,211 00 |
| Continued; am't bro't up | | | $1,211 00 |
| 236 1 bureau | | 8 00 | |
| 1 wardrobe | | 12 00 | |
| 1 washstand | | 2 00 | |
| 1 bedstead | | 12 00 | |
| 1 bureau | | 8 00 | |
| 2 beds | | 12 50 | |
| 1 washstand | | 2 00 | |
| 1 bolster & 2 pillows | | 3 00 | |
| 1 iron safe | | 100 00 | |
| | | | 159 50 |
| | | | $1,370 50 |

MEMPHIS, TENN., *Jan'y* 30, '67.

I certify that the above bill, am't to thirteen hundred and seventy dollars & fifty cents, is a true copy of the original, as paid by me June 17th, 1864.

HUGH NOTT,
*Paymaster U. S. Navy.*

237 EXHIBIT "C."—*Sale by W. H. Passmore & Co. of sundry articles of furniture for ac. S. T. Morgan, agent f. J. Andrews.*

| 1863. | | | |
|---|---|---|---|
| April 15. | 12 | chairs, 70 | 8 40 |
| | 1 | rocking-chair | 2 30 |
| | 29 | chairs | 2 70 |

| | | | |
|---|---|---|---|
| 6 | washstands, 20 c. | 1 | 20 |
| 1 | wardrobe | 4 | 00 |
| 1 | " | 3 | 25 |
| 1 | " | 5 | |
| 1 | bureau | 4 | 85 |
| 1 | " | 7 | 25 |
| 1 | " | 5 | |
| 1 | hair sofa | 7 | 25 |
| 1 | bedstead | 3 | 25 |
| 1 | wardrobe | 3 | 50 |
| 8 | washstands, 55 c | 4 | 40 |
| 3 | shuck mattrasses, 4 10 | 12 | 30 |
| 7 | " " $3 | 21 | |
| 11 | comforts, 1 60 | 17 | 60 |
| 2 | feathers beds, 9 & 11$ | 20 | |
| 2 | washstands, for | 2 | 20 |
| 4 | pillows & bolsters, for | 8 | 00 |
| 1 | double sofa | 7 | |
| 1 | bedstead | 2 | 60 |
| 1 | " | 5 | |
| 1 | " | 4 | |
| 2 | looking-glasses, 2 & 4 25 | 6 | 25 |
| 18 | bedsteads, 70 | 12 | 60 |
| 1 | hair mattrass | 11 | 00 |
| 4 | cotton mattrasses, 3 87 | 15 | 50 |
| 1 | bedstead | 1 | |
| 238 1 | lot blanketts | 15 | |
| 16. 39 | chairs, 37½ | 14 | 62 |
| 25 | blanketts, 85 | 21 | 25 |
| 2 | " | 2 | |
| 6 | comforts, 1 80 | 10 | 80 |
| 16 | " 1 56 | 24 | |
| 2 | washstands, 40 | | 80 |
| 1 | " | | 65 |
| 23 | " 30 | 6 | 90 |
| 21 | cotton mattrasses, 10 50 | 220 | 50 |
| 1 | bureau | 2 | 60 |
| 25 | shuck mattrasses, 3$ | 75 | |
| 2 | feather beds, 11$ | 22 | |
| 2 | " " 9 | 18 | |
| 1 | " " 6 50 | 6 | 50 |
| 1 | " " | 11 | 50 |
| 1 | " " | 6 | |
| 1 | " " | 8 | |
| 1 | " " | 4 | 50 |
| 1 | " " | 7 | 50 |
| 1 | " " | 14 | |
| 1 | " " | 4 | 75 |
| 1 | " " | 4 | 75 |
| 1 | " " | 5 | 75 |
| | Am't up | 715 | 77 |
| | 2d P. Am't bro't up | 715 | 77 |
| 30 | bolsters, 1 25 | 37 | 50 |
| 16 | pillows | 16 | |

| | | | | | |
|---|---|---|---|---|---|
| | | 1 | bureau | 2 | |
| | | 1 | " | 2 | 10 |
| | | 1 | " | 2 | 55 |
| | | 1 | " | 2 | 75 |
| | | 1 | " | 2 | 75 |
| | | 1 | " | 2 | 85 |
| 239 | 17. | 1 | bedstead & 2 mattrasses | 15 | |
| | | 1 | pillow & bolster | 2 | |
| | | 1 | chair | | 50 |
| | | 13 | pillows | 13 | |
| | | 2 | bedsteads | 5 | |
| | | 1 | wardrobe | 3 | 25 |
| | | 1 | " | 2 | |
| | | 1 | bureau | 3 | 25 |
| | | 1 | " | 2 | |
| | | 1 | " | 2 | 25 |
| | | 3 | washstands | 2 | 40 |
| | | 3 | bedsteads, 50 | 1 | 50 |
| | | 1 | " | 1 | |
| | | 1 | lot chairs | 1 | 60 |
| | | 8 | cotton mattrasses, 11 75 | 94 | |
| | | 2 | hair mattrasses, 5 50 | 11 | |
| | | 11 | shuck " 2 75 | 30 | |
| | | 4 | pr. sheets, 1 25 | 5 | |
| | | 6 | " " 1 05 | 6 | 30 |
| | | 7 | " " 85 | 5 | 95 |
| | | 6½ | " pillow slips, 35 | 2 | 27 |
| | | 14 | coverlids, 85 | 11 | 90 |
| | | 20 | blanketts, $1 | 20 | |
| | | 5 | comforts, 80 | 4 | |
| | | 1 | feather bed | 7 | |
| | | 1 | " " | 6 | |
| | | 40 | bedsteads, 50 | 20 | |
| | | 1 | small table, 1 15 | 1 | 15 |
| | | 3 | washstands, 70 | 2 | 10 |
| | | 1 | wardrobe | 4 | 75 |
| | | 1 | " | 4 | |
| | | 1 | centre table | 3 | 25 |
| | | 1 | " " | 2 | 65 |
| 240 | | 7 | bolsters, 55 | 3 | 85 |
| | | 1 | feather bed | 9 | |
| | | 1 | " " | 12 | 50 |
| | | 1 | " " | 7 | 50 |
| | | 2 | " " 7 50 | 15 | |
| | | 2 | " " 6 75 | 13 | 50 |
| | | 1 | " " 5 25 | 5 | 25 |
| | | 1 | " " | 6 | 60 |
| | | 2 | " " 7 75 | 15 | 50 |
| | | 2 | pillows | 1 | 05 |
| | | 1 | wardrobe | 2 | 50 |
| | | | Am't over | $1,172 | 49 |
| | | | P. 3. Am't up | 1,172 | 49 |
| | | 1 | oil-cloth | | 35 |
| | | 1 | lot carpets | 36 | |

| | | | | |
|---|---|---|---|---|
| | 1 | " musquito bars | 8 | 30 |
| | 2 | looking-glasses | 1 | 20 |
| | 3 | p's bed-ticking | 5 | 90 |
| | 1 | looking-glass | 1 | 60 |
| | 1 | " " | 1 | 50 |
| | 1 | " " | | 90 |
| | 1 | " " | 3 | |
| | 1 | " " | | 80 |
| | 4 | comforts, 80 | 3 | 20 |
| | 3 | " for | 3 | |
| 18. | 2 | bedsteads | 4 | |
| | 7 | chairs | 2 | |
| | 1 | " | 1 | |
| | 3 | candle stands | | 75 |
| | 2 | tables | 2 | 75 |
| | 12 | comforts | 6 | |
| | 1 | bureau | 5 | |
| 241 | 1 | cotton mattrass | 5 | |
| | 4 | shuck mattrasses, 1 75 | 7 | 00 |
| | 1 | feather bed | 6 | |
| | 1 | " " | 8 | 50 |
| | 1 | " " | 13 | 50 |
| | 1 | " " | 9 | |
| | 1 | " " | 5 | 50 |
| | 1 | " " | 6 | 25 |
| | 1 | " " | 12 | 75 |
| | 1 | " " | 8 | 25 |
| | 1 | " " | 6 | 75 |
| | 1 | " " | 13 | |
| | 2 | bolsters, 1 10 | 2 | 20 |
| | 1 | " | 1 | |
| | 2 | feather pillows | 2 | |
| | 2 | " bolsters | 1 | 90 |
| | 2 | hair mattrasses | 13 | 25 |
| | 1 | feather bed | 7 | 50 |
| | 1 | washstand | 2 | 80 |
| | 1 | " | 1 | 30 |
| | 1 | hat rack | | 25 |
| | 1 | lot chairs | 1 | |
| | 1 | wardrobe | 2 | 45 |
| | 1 | washstand | 2 | 75 |
| | 3 | " | 2 | 75 |
| | 1 | bureau | 2 | 75 |
| | 1 | looking-glass | 1 | 75 |
| | 1 | " " | | 50 |
| | 1 | " " | | 65 |
| | 1 | lot old carpet | 15 | |
| | 1 | " " " | 7 | |
| | 1 | bedstead | 2 | 50 |
| | 7½ | " for | 3 | |
| | | | $1,435 | 54 |
| 242 | | Am't bro't up | $1,435 | 54 |
| | 1 | lot venetian blinds | | 25 |
| | 1 | " bagging | | 50 |
| | 1 | " " | 6 | 50 |

| | | | | |
|---|---|---|---|---|
| | 6 | chairs | | 6 |
| | 6 | " | | 4 |
| | 1 | p'r carpet | | 8 |
| | 1 | carpet | | 27 |
| | 1 | lot oil-cloth | | 10 |
| | 1 | " 3-p's oil-cloth | | 9 75 |
| | 1 | card table | | 2 05 |
| | 1 | lot carpets | | 16 |
| | 2 | shuck mattrasses | | 4 75 |
| | 1 | bedstead | | 4 50 |
| 20. | 1 | shuck mattrass | | 4 |
| | 1 | wardrobe | | 4 |
| | 1 | " | | 2 25 |
| | 1 | centre table | | 1 60 |
| | 1 | window shade | | 25 |
| | 1 | bureau | | 3 25 |
| | 1 | " | | 6 25 |
| | 9 | foot tubs, 25 | | 2 25 |
| | 1 | oil-cloth | | 80 |
| | 1 | lot broken chairs | | 1 |
| | 1 | washstand | | 30 |
| | 1 | " " | | 70 |
| | 1 | " " | | 25 |
| | 1 | " " | | 50 |
| | 1 | bowl & pitcher, 70 | | 70 |
| | 2 | 70 | | 1 40 |
| | 1 | | | 1 |
| | 1 | | | 80 |
| 243 | 1 | lot 4 bowls, broken | | 35 |
| | 1 | lot 3 c. c. pots | | 35 |
| | 1 | " 1 " " | | 90 |
| | 1 | " " | | 80 |
| | 2 | " " | | 50 |
| | 2 | candlesticks | | 10 |
| | 1 | bedstead | | 2 50 |
| | 10 | Bibles | | 30 |
| | | | | $1,571 94 |

CHARGES.

| | | | |
|---|---|---|---|
| To commission | 157 19 | | |
| " advertising | 10 00 | | |
| | | | 167 19 |
| | | | 1,404 75 |
| 1863. | | | |
| Ap'l 17. To cash | 500 00 | | |
| 18. | 600 00 | | |
| 20. | 300 00 | | |
| | | 1,400 00 | |
| | | | 4 75 |

E. O. E.
Memphis, April 21, 1863.

W. H. PASSMORE & CO.,
By ELLIOTT.

(Endorsed:) Exhibit "C" to my deposition in case of S. M. Jones v. Jos. J. Andrews et al.

SAMUEL T. MORGAN.

244 And thereupon, afterwards, to wit, at the September term, 1867, of said court, and on the 4th day of February, 1868, the following order was made in said cause, to wit:

S. M. JONES
*v.*
JOSEPH J. ANDREWS ET AL. } Injunction bill.

This cause having been taken up for hearing on a previous day, the consideration of the same was resumed, and the argument of counsel being concluded, the court takes the cause under advisement.

And thereupon, afterwards, to wit, at the September term, 1867, of said court, and upon the eleventh day of February, 1868, the said cause coming on again, the following decree was rendered therein, to wit:

245 S. M. JONES
*vs.*
JOSEPH J. ANDREWS ET ALS. } Injunction bill.

On this, a regular day of the September term, 1867, of the circuit court of the United States for the district of West Tennessee, this cause came on to be heard before said court upon the pleadings, exhibits, and proof; and it appearing to the satisfaction of the court that the complainant is not entitled to relief in this cause, it is by the court ordered, adjudged, and decreed, that the bill of complainant's be dismissed, and that complainant do pay the costs of this suit, for which execution may issue against complainant and Albert M. Stoddard, the security in his cost bond.

And upon application of complainant an appeal is granted to him, to the next term of the Supreme Court of the United States,
246 upon condition that he do, within 30 days from this date, file in the cause the appeal bond, with security to be approved by the clerk, in the penalty of five hundred dollars, conditioned to pay all costs and damages that may be decreed against him in the cause.

And afterwards, to wit, at the term of said court last aforesaid, and on the twelfth day of February, 1868, the following order was made in said cause:

STEPHEN M. JONES
*v.*
JOSEPH J. ANDREWS ET ALS. } Injunction bill.

Upon application of complainant, it is ordered by the court that the decree entered in this cause be modified as follows, to wit:

That the bill in this cause be dismissed for want of jurisdiction in this court over the parties; and, further, for want of equitable
247 jurisdiction over the subject-matter as presented in the bill, but the dismissal is without prejudice to the right of complainant Jones to institute proper proceedings to assert his rights both as to the rent, notes, and to the personal property alleged to have been converted by defendant Andrews.

248 UNITED STATES OF AMERICA,
*District of West Tennessee, ss:*

I, Abram S. Mitchell, clerk of the United States circuit court for the district of West Tennessee, do hereby certify that the foregoing 247 pages of manuscript contain a full and true copy of the record and proceedings in the suit of Stephen M. Jones against Joseph J. Andrews, P. Reed, & H. W. Bryson, on the equity side of said court, as the same appear and remain of record and on file in my office.

Witness my hand and the seal of said court at office in the city of Memphis, this 4th day of February, A. D. 1869.

[SEAL.] A. S. MITCHELL, *Clerk.*

249 In equity in U. S. circuit court.

*Decree 11th February*, 1868, *for costs against compl't, & A. M. Stoddard, security.*

STEPHEN M. JONES
*vs.*
JOSEPH J. ANDREWS ET AL. } No. 58.

BILL OF COSTS.

| | |
|---|---|
| Clerk's costs | 150 85 |
| Marshal's costs | 8 50 |
| Commissioners' costs | 90 00 |
| Docket fees of attorneys | 52 50 |
| | $301 85 |

Received payment in full.

A. S. MITCHELL, *Clerk*,
ISAAC MORRISON, *D. C.*

250 IN THE CAUSE OF S. M. JONES
*vs.*
J. J. ANDREWS.

You are authorized to permit Humes & Poston to give the appeal bond as within the time allowed them to take appeal.

RANDOLPH & KORTRECHT & CRAFT,
*Sol's for Andrews.*

To A. S. MITCHELL, *Clerk of U. S. District Court.*
MARCH 30*th*, 1868.

(Indorsed:) No. . S. M. Jones vs. Joseph J. Andrews & others.

# In the Supreme Court of the U. S.

STEPHEN M. JONES
v.
JOSEPH J. ANDREWS, P. REED and H. W. BRYSON } No. 221.

The bill in this case was filed by the appellant in the Circuit Court of the United States for the Western District of Tennessee, the material allegations of which are as follows:

That Andrews recovered a judgment on the law side of said court against Reed and Bryson at the March Term, 1866, upon which he had served the complainant with a writ of garnishment commanding him to appear at the ensuing September Term of said court, to answer as to his indebtedness, &c., to said Reed and Bryson.

That the said judgment had been obtained on notes given by said Reed and Bryson to said Andrews as the consideration of a lease of the Commercial Hotel from 1 January, 1859, to 1 January, 1864.

That the said Reed and Bryson occupied the said premises to the 1 September, 1859, and paid the rent up to that date, when, with the consent of Andrews, they sublet the premises to the complainant, who paid to said Reed and Bryson $6,000 for the furniture, which he had placed in the hotel, and gave his several promissory notes to correspond with the unpaid notes of Reed and Bryson to said Andrews.

That Andrews accepted the complainant as his tenant,

and received the notes thus executed by him, and that complainant continued to pay the same to said Andrews as they fell due up to the 1 January, 1862. But subsequently to this, owing to the prostration and derangement occasioned by the the war, he was unable to continue his payments.

That during the temporary absence of the complainant in August, 1862, the said Andrews drove his family and employees from the said premises, took possession of the same, together with all the complainant's furniture to the value of $12,000

That Andrews took an inventory of the furniture, leased the house and said furniture to other parties, and after said lease expired sold the whole or greater part of the complainant's furniture and appropriated the proceeds.

That the said Andrews has placed the complainant's notes in the hands of an attorney, who is about to sue them. That the complainant is not indebted to said Andrews; but, on the contrary, that Andrews is his debtor by reason of his appropriation of the furniture.

That the judgment against Reed and Bryson was rendered on a default, and that judgment and the attempt to collect the notes given by the complainant is the result of a collusion and fraudulent agreement between Andrews and Reed and Bryson to cheat and defraud the complainant by which Andrews would enforce the payment of his notes and avoid the just claim of complainant for the furniture appropriated by him, as also, in the wrong done in expelling him from the premises.

That the complainant is amply able to meet all his responsibilities, while Reed and Bryson are certainly insolvent, and Andrews is a citizen of New York.

The bill prays that the complainant's notes be delivered up and cancelled, and that the defendants be enjoined from transferring or collecting the same, and for an ac-

count against Andrews as to the furniture of complainant appropriated by him, and the damages resulting from his wrongful ejectment, and to a discovery under oath as to which of the parties defendants is really the owner of his notes, and concludes with a prayer for general relief.

The decree does not pass upon the merits, but dismisses the bill for want of jurisdiction over the parties, and for want of equitable jurisdiction over the subject matter as presented in the bill. p. 74, Rec

It is contended that as the bill is filed by a citizen of Georgia against a citizen of New York and citizens of Tennessee, that the jurisdiction of the Circuit Court cannot be sustained.

This objection cannot be sustained under the constitutional provision, for this extends to controversies between citizens of different States.

The question must then depend solely upon the statutes which define and limit the jurisdiction, and if any doubt existed under the act of 1789, it is believed that none exists under that of 1839.

When it was said that the act of 1839 makes no change in reference to the jurisdiction, we are to understand the remark as applying only to the absence of *necessary parties.* The fundamental principle that no decree can be made where a necessary party is not before the court was not intended to be invaded by the act, and this is all that was ever intended in the remark that the act of 1839 had not changed the question of jurisdiction.

On the contrary this court has held expressly that the act of 1839 *had enlarged* the jurisdiction of the Circuit Courts, and a plaintiff was allowed to maintain a suit against a citizen of another State, although there was another defendant who was a citizen of the same State as that of the plaintiff.

Louisville R. R. C. v. Letson, 2 Howd. 497.

Taylor v. Cook, 2 Md. 516.
Doremus v. Bennet, 4 Md. 224.

It is not necessary however in this case to show the citizenship of the several parties, for the bill is for relief, as to a litigation pending on the law side of the same court in which it is filed.

In Dunn v. Clark, one Graham, a citizen of Virginia, had obtained a judgment in ejectment in the Circuit Court of Ohio against Clark, subsequently Graham died, and under his will, the land was held by Dunn a citizen of Ohio. Clark a citizen of Ohio, filed his bill for an injunction to judgment, and it was said "that no doubt is entertained by the court that the jurisdiction may be sustained as against Dunn."

The injunction bill is not considered an original bill between the same parties. 8 Pet. 1.

In Freeman v. Howe, White, a citizen of New Hampshire, instituted a suit in the Circuit Court of the United States against the V. and M. Railroad Company, under which the cars of the Company were attached. Howe, a citizen of Massachusetts and mortgagee of said company, brought replevin against Freeman, who held by authority of the attachment suit. In the replevin suit it was held that the authority set up by Freeman was no answer, and judgment was given against him. The case was brought to this Court under the 25th section of the judiciary act.

In reversing this judgment, the Court say "the counsel and the Court below were in error in respect to the appropriate remedy of the plaintiffs in the replevin suit. It was supposed they were utterly remediless in the Federal Courts, inasmuch as both parties were citizens of Massachusetts." The remedy is to be found in the principle that a bill filed on the equity side of the Court to restrain or regulate judgments or suits at law in the same Court, and thereby prevent injustice or an inequitable advantage

under mesne or final process, is not an original suit, but ancillary and dependant, supplementary merely to the original suit out of which it had arisen, and is maintained without reference to the citizenship or residence of the parties.

24 Howard, 460.

Dunlop v. Stetson, 4 Mass., 360.

So as to a creditors bill to obtain the fruits of a judgment or to remove obstacles to the remedy at law.

Hatch v. Dorr, 4 Md. 112.

Or to stay proceedings at law.

St. Luke v. Barclay, Bl. c. c. 259.

It is again objected there is no equity in the bill because the claim set up therein is not available in equity as a set-off.

Great regret has been expressed that the doctrine of compensation as it exists in the civil law, has not been transferred to its full extent into our equity jurisprudence. The universality of its adoption in all the systems of jurisprudence which have derived their origin from Roman fountains, demonstrate its persuasive justice and sound policy. The marvel is, that Courts of Equity should have hesitated to foster it. Story.

In the case of Wallis vs. Bastard, the Lord Chancellor said:—"The principle of set-off is quite consistent with natural equity; and when it can be adopted it is an arrangement which this court will be very ready to assist, while it will look to any circumstances that occurred at the time when persons became reciprocally indebted, in order to say that a set-off did in fact take place."

4 De. Gex., M. N. & Gord, 257.

Courts of Equity will therefore extend the doctrine of set-off, and claims in the nature of set-off beyond the law in all cases where peculiar equity intervenes between the

parties, and these are so very various as to admit of no comprehensive enumeration.

Story's Eq., § 1437.

Set-off is in all cases useful to prevent circuity of action, but where one of the parties is dead, insolvent or *beyond the jurisdiction* of the court it is absolutely necessary to prevent gross injustice.

Byles on Bills, ~~Mortg.~~ Marg., p. 287.

The equity which operates in the case in favor of the complainant, is the insolvency of Reed and Bryson, and the citizenship of Andrews which places him beyond the jurisdiction of the court, and that the opposing claims arise out of the same transaction.

The subject of set-off as it relates to mutuality, certainty, &c., &c., is regulated in the different States by local statutes, and the case now under consideration is to be determined by the rule that prevails in the State of Tennessee.

By the act of 1756 set off was allowed. "In all cases where there shall be *mutual debts*, notwithstanding such *debts* may be deemed in law to be of a different nature."

Here while enlarging the common law rule the word *debt*, used in the English Statutes is retained.

But the code of 1858 still further enlarges the right. By § 2918 it is provided—that set off may be made.

1. In case of *mutual demands* held by defendant against the plaintiff at the time of action brought.

2. Of *any matter arising out of plaintiffs demand*, and for which the defendant could have recovered in a cross action.

3. Of *any matter* growing out of the original consideration of any written instrument for which the defendant could have recovered in a cross action.

4. Of any equities between the defendant and plaintiff which by law have attached to the demand.

And by § 2919 it is still further provided, that mutual

debts though of a *different nature* may be pleaded in bar or in discharge of the action.

Independant of statutory regulations, unliquidated damages could be set off under plea of payment in an action arising from the same transaction, not, it is true, as in strictness a set off, but as an equitable defense.

Testing the case, however, by the Tennessee statutes, there would seem to be no difficulty in determining the question without considering the numerous decisions which have been made on the statutes of the several States, which have relaxed more or less the rule as to unliquidated damages.

For a review of some of these decisions, see Waterman on set off, p. 359.

P. PHILLIPS,
*Of Counsel for Appelant.*

Reverdy Johnson

TATES.

# SUPREME COURT UNITED STA

## No. 221.

ON,

STEPHEN M. JONES, Appellant,

*vs.*

JOSEPH I. ANDREWS, PINCKNEY REED, AND H. W. BRYSON, Appellees.

*From the Circuit Court of the United States for the District of West Tennessee.*

**Argument for the Appellees**

ALBERT PIKE,
ROBERT W. JOHNSON,
*Of Counsel.*

# SUPREME COURT UNITED STATES.

## No. 221.

STEPHEN M. JONES, Appellant,

*vs.*

JOSEPH I. ANDREWS, PINCKNEY REED, AND H. W. BRYSON, Appellees.

*From the Circuit Court of the United States for the District of West Tennessee.*

**Argument for the Appellees**

ALBERT PIKE,
ROBERT W. JOHNSON,
*Of Counsel.*

No. 221.

# SUPREME COURT OF UNITED STATES.

STEPHEN M. JONES. Appellant,

*vs.*

JOSEPH I. ANDREWS, PINCKNEY REED, and H. W. BRYSON, Appellees.

## FOR THE APPELLEE, ANDREWS.

This was a bill in Equity, exhibited in the Circuit Court of the United States for the District of West Tennessee, by Stephen M. Jones, against the appellees. It is entitled, at the beginning,

"Stephen M. Jones, citizen and resident of Richmond County, Georgia,

*vs.*

Joseph I. Andrews, citizen and resident of City and County and State of New York; P. Reed and H. W. Bryson, both citizens and residents of Shelby County, Tennessee."

And the *prayer* of the bill commences thus:

"The premises considered, complainant prays that Joseph I. Andrews, a resident and citizen of the city, county and State of New York, and the said Reed and Bryson, both of whom are residents of Shelby County, in the State of Tennessee, be made parties defendant, by due process and publication," &c.

The defendant Andrews moved to dismiss the bill for want of jurisdiction apparent on its face, and assigned as grounds of the motion:

1. That the bill did not aver the citizenship of the Plaintiff, nor show such facts in regard to the citizenship or residence of the defendants as gave the court jurisdiction.

2d. That the bill showed that the plantiff had an adequate remedy at law.

3d. That the claim set up by the bill was for damages for torts and trespasses, and could not in law or equity be set off against any recovery the plaintiff might obtain against the plantiff in the proceeding by garnishment, (Jones having been garnisheed by Andrews, as debtor of Reed and Bryson, against whom Andrews had obtained a judgment.)

4th. That the plaintiff admitted owing Reed and Bryson, but had not suffered judgment on his notes to them, and did not offer to suffer judgment, in the proceeding at law by garnishment.

The court over-ruled the motion, thinking there was equity in the bill, and that the motion operated as an appearance, so as to preclude Andrews from insisting on his personal privilege as a resident of New York and non-resident of Tennessee.

Andrews then answered, in his answer demurring to the bill for want of equity. Reed did the same.

Bryson was served with process of subpœna on the original bill, but did not answer or appear, nor was any further notice taken of him in the record.

### 1. OF JURISDICTION AS TO THE PARTIES.

The *averments* of the bill formally made, are, as we have seen, that Andrews, one of the defendants, is a citizen of the State of New York, and that Reed and Bryson, the other defendants, are *residents* of the State of Tennessee. There is no *averment* as to the citizenship of the complainant Jones.

But in the caption of the bill we read "Stephen M. Jones, citizen of Georgia, vs. Joseph I. Andrews, citizen of the State of New York, P. Reed and H. W. Bryson, citizens of Tennessee." If this can be coupled with the averments as an allegation, the citizenship of each party is alleged.

The bill does not in the least degree observe the rules of this court. There is no such introductory part as required by the 20th rule, substantially in the form prescribed by it, containing the places of abode and citizenship of all the parties, and Rules 40, 41, 42 and 43, are entirely disregarded.

Andrews took the objection for want of jurisdiction, in the proper manner, by a motion to dismiss. Where the citizenship of the parties does not appear on the face of the

bill, it will be dismissed for want of jurisdiction. *Dodge* v. *Perkins*, 4 *Mason*, 435. *Jackson* v. *Ashton*, 8 *Peters*, 148.

We will not inquire whether the caption of a bill, containing mention of the residence or citizenship of the parties, can be considered as making traversable allegations, for the falsity of which the party would be responsible. To say the least, it is a singularly loose and insufficient mode of averring traversable facts. Is a defendant bound to answer as to facts so mentioned?

Taking the whole together, the case is that the complainant, a citizen and resident of the State of Georgia, files his bill against a citizen of New York and two citizens of Tennessee, in a Circuit Court of the United States for a District in Tennessee. In such a case we do not think that the Courts of the United States have jurisdiction.

By the Constitution, the judicial power of the United States extends "to controversies between citizens of different States."

The judiciary act confines the original jurisdiction of the Circuit Courts, concurrent with the courts of the several States, on the ground of citizenship, to cases where "the suit is between *a citizen* of the State where the suit is brought, and *a citizen* of another State."

It is settled, that although the Constitution gives a broader extent to the judicial power, the actual jurisdiction of the Circuit Courts is governed by the Act of Congress. *Moffat* v. *Soley*, 2 *Paine*, 103. *Hubbard* v. *Northern R. R. Co.*, 25 *Verm.*, 715. The Constitution defines the extent of the judicial power, but does not prescribe how much of it shall be exercised by the Circuit Courts. *Turner* v. *Bank of North America*, 4 *Dallas*, 10. *McIntire* v. *Wood*, 7 *Cranch*, 506. *Kendall* v. *The United States*, 12 *Peters*, 616. *Cary* v. *Curtis*, 3 *Howard* 245.

The act of February 28, 1839. § 1 (5 *Stat.* 321,) provides that where there are several defendants, any one or more of whom shall not be inhabitants of or found within the district in which the suit is brought, or shall not voluntarily appear thereto, the court may entertain jurisdiction, and try and adjudicate the suit between the parties who may be properly before it, the judgment or decree not prejudicing such *other* parties; and the non-joinder of those who are not inhabitants of the district, or not found within it, shall constitute no matter of abatement or other objection to the suit.

Under the act of 1789, if there were more than one plaintiff, or more than one defendant, the Circuit Court could not take jurisdiction unless each of the parties was competent to sue or liable to be sued there. *New Orleans* v. *Winter*, 1 *Wheaton*, 91. *Ward* v. *Arredondo*, 1 *Paine*, 410. *Anderson* v. *Bell*, 2 *Paine*, 426. *Ketchum* v. *Farmers' Loan & Trust Co.*, 4 *McLean*, 1. *Bargh* v. *Page*, *Id.*, 10.

And if the interest of the parties were joint, it was necessary that each of the plaintiffs should be competent to sue each of the defendants, in the particular court, to sustain the jurisdiction. *Strawbridge* v. *Curtiss*, 3 *Cranch*, 267. In that case the court said that it understood the expressions of the act of Congress in regard to the citizenship of the parties, to mean, "that each distinct interest should be represented by persons, *all* of whom are entitled to sue or may be sued in the federal courts; that is, that where the interest is joint, each of the persons concerned in that interest must be competent to sue, or be liable to be sued in those courts." If, therefore, the plaintiff is a citizen of a State other than that in which the suit is brought, every *necessary* defendant must be a citizen of the latter.

In *Ketchum* v. *Farmers' Loan & Trust Co.*, what the court said was, "The bill was filed by the Farmers' Loan and Trust Company of the State of New York; and the Canal Bank, one of the parties against whom the decree was entered, was also of that State. For this reason the decree must be aside."

The act of 1839 wrought no change in the jurisdiction of the court, as respects the character of parties. It only obviates the difficulties arising from inability to join or serve those, of several defendants, who might not reside or be found within the district, or should not choose voluntarily to appear. "Where," it says, "there shall be, in any suit at law or in equity, several defendants," which must be taken to mean persons who are actually made defendants, it being proper to make them so, or which, in the absence of the new provision of the statute, would be *necessary* parties as defendants. Such persons, though liable to be sued in the suit, as citizens of the State wherein the suit is brought, for example, might nevertheless not at the time reside in the district, or could not be found in it, and though proper and necessary parties, might still not choose to appear. In such cases the suit could be proceeded in as against the defendants

served or appearing, without prejudice to those not served and not appearing, even if they had been joined as defendants, by the declaration or bill; and if not joined, no objection of any kind could be taken on account of their non-joinder.

The act of 1839 was not passed, therefore, to remedy the inconvenience caused by the act of 1789, under which "the court must have jurisdiction between each party, plaintiff and defendant." Nor does the act, it seems to us, merely "enable a party defendant, who may not reside in the district, to become a party to the suit," as was also said in *Taylor* v. *Cook*, 2 *McLean*, 516. It says to such a person, "If you are a necessary or proper party defendant, *and are made so*, but cannot be served with process because you do not reside in or are not to be found in the district, and if you will not appear voluntarily, as if served, the suit shall proceed against the other parties, as if you had not been made defendant, working no prejudice to you; and if you are not made defendant, because you do not reside in the district, or cannot be found in it, and will not appear, the suit shall proceed against those who *are* made defendants, and they shall not plead your non-joinder in abatement, or be heard to object in any way on account of it."

If, in case of such non-joinder, the person not joined, and not resident of the district or not to be found in it, can, upon his own motion be made defendant, upon his voluntary appearance, it is because he is a proper party to be made defendant under the act of 1789, and because it would have been the duty of the plaintiff under *that* act, to make him a defendant; and this right to become a defendant, is not expressly and directly given by the act, but is only to be inferred and argumentatively established. For the provisions of the act are, that if the party *is* made a defendant, and, not being served, will not appear, the suit may proceed nevertheless, (and in that case no new statute was needed to enable him to appear;) and that if he is not joined, those who are shall not be heard to object on that account, the statute not saying whether, in that case, he may appear and demand to be made a defendant, although he could not be prejudiced by the judgment or decree, if he should not do so.

It was therefore holden, in *Commercial Bank of Vicksburg* v. *Slocomb*, 14 *Peters*, 60, that the statute of 1839 had not affected the jurisdiction of the Circuit Court, so far as that

depended on the citizenship of the parties. That act relates solely to the nonjoinder of persons not within reach of the process of the court; and does not affect any case where persons having an interest are not joined, because their citizenship is such that their joinder would defeat the jurisdiction. *Shields* v. *Barrow*, 17 *Howard* 141. *Tobin* v. *Walkinshaw*, 5 *Am. Law Reg.*, 122.

Therefore, also, the Court held in *Bargh* v. *Page*, 4 *McLean*, 11, that if the absent defendants live in the same State with the plaintiff, the court can not take jurisdiction, as between them and the plaintiff; for the suit would not be, as to them, between citizens of different States. But this is not very accurately said, because the jurisdiction is not dependent upon the living or residence of the party, here or there, which may be merely temporary; and a defendant might at the time *live* in the same State with the plaintiff, and yet be a citizen of that other State wherein the suit was brought, and be a proper and necessary defendant, if he could be found to be served with process.

And the expression, "for the suit would not be as to them, between citizens of different States," is also inaccurate, because it is not enough that the plaintiff and defendant shall be citizens of different States, but one must be a citizen of the State in which the suit is brought, and the other a citizen of some other State. A citizen of New York cannot sue a citizen of Pennsylvania, in a Circuit Court in Tennessee. There is no reason to presume that the State Courts of Tennessee would not decide impartially between them.

In *Louisville R. R. Co.* v. *Letson*, 2 *Howard*, 497, it was held that the act of 1839 had *enlarged* the jurisdiction of the Circuit Courts, so as to enable a plaintiff to maintain a suit against a citizen of another State, although a joint defendant not served with process was an inhabitant of the same State with the plaintiff.

In *Shields* v. *Barrow*, 17 *Howard*, 141, the Court, after reviewing all the previous decisions, said that the act of 1839 was no more than a legislative affirmance of the rule previously established by *Cameron* v. *McRoberts* and other cases; and that, while the act removed any difficulty as to jurisdiction, *between competent parties*, regularly served with process, it did not attempt to displace the principle of jurisprudence on which the Court rested in *Mallow* v. *Hinde*.

The Court had, in *Louisville R. R. Co.* v. *Letson*, dissented from what was said in *Com. B'k of Vicksburg* v. *Slocomb*, that the act of 1839 did not contemplate a change in the jurisdiction of the Courts, as it regards the character of the parties. *Shields* v *Barrow* is a re-affirmance of the decision thus impugned, but the authority whereof was really not shaken by the opinion in the case in 2d Howard, except in respect of corporations, notwithstanding the general language used there in regard to it, and to *Strawbridge* v. *Curtiss* and *Bank of U. S.* v. *Deveaux*.

It was held in *Nesmith* v *Calvert*, 1 *Woodb. & Min.* 34, that if the citizenship of the principal defendant confers jurisdiction, *and the suit may be maintained against him alone*, the fact that other defendants are citizens of the same State with the plaintiff will not oust it.

In *Ward* v. *Arredondo*, a person who was a real and indispensable party to the decision and final determination of the merits of the case, an essential party to enable the complainant to obtain the relief sought, was held not to be a nominal party, and the Court adopted what was said in *Wormly* v. *Wormly*, 8 *Wheat*, 451, that the criterion by which to determine whether a party is nominal or not, is whether a decree against him is sought.

In *Doremus* v. *Bennet*, 4 *McLean*, 224, the suit was on a promissory note, and instituted in Michigan, against a citizeno f New York and a citizen of Michigan. The former, served with process, pleaded to the jurisdiction, on the ground that his co-defendant and the plaintiff were citizens of the same State. Upon the decision in *Louisville Railroad Company* v. *Letson*, the Court held the plea not to be good. If the decision was correct, it is not true, as held by this Court, that the act of 1839 has not affected the jurisdiction, so far as that depends on the citizenship of the parties.

In *Taylor* v. *Cook*, 2 *McLean*, 516, it was held that the act of 1839 enables a party defendant, who may not reside in the district, voluntarily to become a party to the suit, without ousting the jurisdiction. There the suit was brought in Illinois by citizens of New York, against a citizen of Illinois and a citizen of Missouri. The latter entered a voluntary appearance. It was held that the Court had jurisdiction as to both.

In *Tobin v. Walkinshaw*, 1 *McAllis.*, 30, the Court said that it was settled in *Shields* v. *Barrow*, "that neither the act of

Congress nor the rule of the Court infringes on the general doctrine, and that if the citizenship of parties be such that their joinder would defeat the jurisdiction of the Court, such fact will not supersede the necessity of making them parties."

In *Clearwater* v. *Meredith*, 21 *Howard*, 439, a citizen of Ohio sued three citizens of Indiana, in the District of Indiana, omitting a fourth contractor, who was a citizen of Indiana. The Court said, "It is too clear for controversy, that the act of 1839 did not intend to change the character of the parties to the suit. The plaintiff may sue in the Circuit Court any part of the defendants, although others may be jointly bound by the contract, who are citizens of other States."

In *Heriot* v. *Davis*, 2 *Woodb. & Cin.*, 229, it was held that a bill in equity would be sustained, though some of the defendants, on whom no service was made, were citizens of the same State as the plaintiff. The Court followed the decision in *Louisville Railroad Co.* v. *Letson*, considering the older cases to be, *to some extent*, overruled by it, and that it meant, under certain facts, to relieve against the construction put on the act of 1839 by *Strawbridge* v. *Curtiss*.

In *Tuckerman* v. *Bigelow*, 21 *Law Rep.*, 208, in 1857, it was held by CURTIS, J., that the act of 1839 had not dispensed with the requirement of the law, that each plaintiff should be competent to sue each defendant. He said that the only purpose of the act was "to enable the court to proceed in certain cases, as between parties properly before it, *and over whom the court had jurisdiction*, although other parties might be out of the reach of process. It does not extend the jurisdiction of the court over parties not previously within its jurisdiction." There a citizen of Vermont sued in Massachusetts a citizen of Massachusetts and two citizens of New Hampshire, and the bill was dismissed for want of jurisdiction, as against the citizen of New Hampshire.

The act of 1839 seems to have no bearing whatever, on the question presented by this case. Here a bill in equity is filed by a citizen of Georgia against a citizen of New York, and two citizens of Tennessee, in a Circuit Court in Tennessee, and the whole matter in controversy is between the citizen of Georgia and the citizen of New York. The citizens of Tennessee are not proper parties to the suit, since no relief is sought against them, and their interests are not in the

least degree to be affected by any decree that could be made.

It is settled that, under the act of 1839, the court cannot make a decree in the absence of an indispensable party, whose rights must *necessarily* be affected; as in the case of a bill to rescind a contract. *Shields* v. *Barrow*, 17 *Howard*, 130, 140. *Herndon* v. *Ridgway*, *Id.* 424. *North Indiana Railroad Co.*, v. *Michigan Centre Railroad Co.*, 15 *Howard*, 233. *Comm. Bank of Vicksburg* v. *Slocomb*, 14 *Peters*, 60. *Tobin* v. *Walkinshaw*, 1 *McAllis.*, 30. *Greene* v. *Sisson*, 2 *Curtis C. C.*, 171. *Coiron* v. *Millaudon*, 19 *Howard*, 113.

Whether the Circuit Court had jurisdiction is to be determined by the act of 1789. That act does not speak, in terms, of cases where there are more plaintiffs than one. It gives jurisdiction, where the suit is between *a citizen* of the State where the suit is brought, and *a citizen* of another State." Of course there is no jurisdiction where *neither* of the parties is a citizen of the State in which the suit is brought. *Shute* v. *Davis*, *Peters C. C.*, 431.

We suppose that any number of joint plaintiffs, citizens of different States, may sue a citizen of still another State, whereof neither of the plaintiffs is a citizen, in a Circuit Court of that State.

We suppose that a citizen of Tennessee might sue citizens of any number of *other* States, as joint defendants, in a Circuit Court in Tennessee.

For in each case, the reason for the jurisdiction holds, that the State Courts of Tennessee might not be impartial between their own citizens and citizens of another State or of other States.

Could a citizen of Tennessee and a citizen of Kentucky, as joint plaintiffs, sue in a Circuit Court in Tennessee, a citizen of Ohio, or citizens of New York, Vermont and Maine, as joint defendants, these temporarily residing in Tennessee? Because *one* of the plaintiffs is competent so to sue these defendants under the act of 1789, does his competency make the citizen of Kentucky competent also, who certainly could not in that forum sue the same defendants, as *sole* plaintiff?

And, finally, can a citizen of Ohio sue, in a Circuit Court in Tennessee, a citizen of Tennessee and a citizen of New York. Does the liability of the citizen of Tennessee to be sued there, create a like liability for the citizen of New York,

whom certainly the plaintiff could not sue there as *sole* defendant?

Can this court say that the intention of the act of 1789, was that if *one* of several defendants were a citizen of the State in which the suit was brought, and *one* of several plaintiffs a citizen of another State, the jurisdiction should attach, without regard to the citizenship of the other plaintiffs and defendants? If such was the intention, it would not matter if part of those other plaintiffs were citizens of the State in which the suit was brought, that is, of the same with one or more of the defendants; nor if part of these other defendants were citizens of the same State with one or more of the plaintiffs. Can the phrase, "between a citizen of Ohio and a citizen of another State," mean between several parties, *one* of whom is a citizen of Ohio, and several other parties, *one* of whom is a citizen of another State?

The provision in the act of 1789 cannot mean that. It has been held that the circuit courts are not deprived of their jurisdiction where it arises from the citizenship or alienage of the parties, by the joinder of a merely nominal party, who does not possess the requisite character. *Ward* v. *Arredondo*, 1 *Paine*, 410. *Ward* v. *Davis*, 18 *Howard*, 467.

It would be absurd to suppose that the intention of the makers of the act of 1789 was to restrict the jurisdiction of the circuit courts to cases where there should be but a single plaintiff and a single defendant; and the courts will of course give the statute its intended practical operation, as far as it may be possible, if the rules of the common law, by which acts of Congress are to be construed, (*Rice* v *Minnesota and North W. Railroad Co.*, 1 *Black*, 359,) will permit. In *Smith* v. *Rines*, 2 *Sumner*, 345, STORY, J., speaking of the 12th section of the judiciary act, said: "In its terms, it applies only to the case of a single defendant. But, in its true interpretation, it cannot admit of a rational doubt that it means the party defendant, whether one or many, and that it must apply to cases where several aliens, or several citizens of another State are jointly sued as defendants."

The provision in question can hardly be deemed to mean that the circuit courts have jurisdiction only where there is a single plaintiff and a single defendant. It does not say that if there are several defendants, (for example,) it shall be enough if *one* of them is a citizen of the State where the suit is brought. It makes no provision in terms for such a

case. Nevertheless, it must be supposed that it intended to provide for the case of more than one defendant; and it can be made to do so, only by giving to the phrase "a citizen" a plural meaning, as if the provision read "between citizens of the State in which the suit is brought, and citizens of another State, or of other States."

Accordingly it has been held that such cases only are removable from the State courts to the circuit courts, under the act of 1789, as might have been instituted originally in the latter. *Smith* v. *Rines*, 2 *Sumn.*, 338. And that a suit cannot be removed where a part of the plaintiffs or defendants are citizens of the State where the suit is brought, and a part of some other State. *Wilson* v. *Blodget*, 4 *McLean*, 363. See also *Hubbard* v. *Northern Railroad Co.*, 25 *Verm.*, 715. *Board of Foreign Missions* v. *McMaster*, 4 *Am. Law Reg.*, 529.

And, if the clause of the statute *is* to be literally and strictly construed, then it is fatal to this case, because it contains a grant and limitation of jurisdiction; and, and if the words "*a* citizen" must mean a *single* citizen only, there is not a suit here between a citizen of the State where the suit is brought, and a citizen of another State: *first*, because it is between two citizens of the State where the suit is brought and a citizen of Georgia, and also between that citizen of Georgia and a citizen of New York; and *second*, because the litigation is really not between Jones on one side, and Reed and Bryson on the other, but between Jones, a citizen of Georgia, and Andrews, a citizen of New York, in a circuit court of Tennessee. Andrews, a citizen of New York, is not sued by any citizen of Tennessee. If Jones were a citizen of Tennessee, and in that State sued a citizen of Georgia, and one of New York, there would be reason for holding that the court had jurisdiction, because there the plaintiff could sue each defendant separately, so far as citizenship was concerned, in the federal court; but here Jones, a citizen of Georgia, cannot sue Andrews, a citizen of New York, at all, in the circuit court, for that is not a suit between a citizen of the State where the suit is brought, and a citizen of another State.

The inherent vice of the case, in respect to the jurisdiction, is made even more apparent by the cross-bill filed by Andrews against Jones alone. It alleges that Andrews is a citizen of New York, but says nothing as to the citizenship

of Jones; but if it had averred that, it would have been a suit by a citizen of New York against a citizen of Georgia, in a Circuit Court of the United States in Tennessee. Not maintainable as an independent suit, it is really a defence to the original suit, and shows that the whole litigation in that is in reality between Andrews and Jones, a controversy *not* between a citizen of the State in which the suit is brought and a citizen of another State.

The only issue *is* between them. The only inquiry which the Court is asked to enter upon, is whether Andrews took and converted Jones' furniture, and to what value; and whether he turned the family of Jones out of doors, and what damage Jones has suffered by that act. The decree asked for would affect Andrews alone, for Jones does not claim to have any defence of any kind against his notes to Reed and Bryson.

The suit is a mere attempt to commit a fraud on the jurisdiction of the court, and Reed and Bryson are made parties for that purpose alone.

II. DID THE BILL PRESENT A CASE FOR THE INTERFERENCE OF A COURT OF EQUITY?

The case upon which the applicant invoked the aid of the Circuit Court in Chancery, as made by the bill, is as follows:

That in March, 1866, Andrews recovered against Reed and Bryson, in the same Circuit Court, a judgment for over five thousand dollars, and upon it caused Jones to be garnisheed as debtor of Reed and Bryson, to appear at September Term, 1866, and answer as to his indebtedness to Reed and Bryson, or their effects in his hands. The bill was filed in June, 1866.

That the notes of Reed and Bryson, on which the judgment was rendered, were for rent of the Commercial Hotel, in Memphis, leased to them by Andrews on the 29th of December, 1858, from January, 1859, to January, 1864.

That Reed and Bryson occupied the hotel until September, 1859, and then sub-let it to Jones for the residue of the term, at the same rent, taking his notes to themselves, for the same sums as those given by them to Andrews, and falling due at the same time.

That, in addition, Jones paid them about $6,000 for furniture placed in the hotel.

That Andrews had left some old furniture in the hotel, which, by his lease, was, at the expiration of it, to become the property of Reed and Bryson, provided their notes were punctually paid, and the premises kept in good order.

By the lease, as exhibited, the lessees were to finish the third and fourth stories of the building into rooms suitable for a hotel, during the first five years of the lease, and keep it in repair; and the lease to be forfeited, at Andrews' option, if any of the notes should not be paid at maturity.

That Andrews received Jones as his tenant, and took of Reed and Bryson the notes made by Jones to them, and received payment of them as they fell due, up to 1st of January, 1862; and that he visited Memphis twice and boarded with Jones at the hotel.

That after January, 1862, Jones was unable to pay his notes, in consequence of the rebellion and for other reasons stated, including a fire which consumed part of the premises; so that he could not carry on the hotel.

That some five days "before Memphis fell" Jones "went South" on private business not connected with the rebellion, expecting to return in a few days; but the city fell into the hands of the United States, and he could not return.

That before leaving Memphis he had arranged with a third person and his wife to stay in the hotel, and assist *his* wife in taking care of the property; but while he was absent, on the 12th of August, 1862, Andrews took possession of the house and of all the plaintiff's furniture, worth some $12,000, turned his family out of the house, re-leased the house, and, after a time, sold the whole or a greater part of the furniture and appropriated the proceeds to his own use.

That by the ejectment of his family from the house the plaintiff has been injured and put to great loss and expense, to wit, several hundred dollars.

That the defendants are about to sue him on his notes, while Andrews owes him for the furniture and damages for ejecting his family, and the notes ought to be given up and cancelled.

That Andrews had delivered plaintiff's notes to Reed and Brysen, though they belonged to himself; and that Reed and Bryson permitted Andrews to take judgment against them by default, which was, altogether, the "result of a collusion and fraudulent agreement between Reed and Bryson and Andrews to cheat and defraud complainant, and

enable Andrews to escape responsibility for his tortuous acts."

That complainant is able to meet all his liabilities, and Reed and Bryson are insolvent, and have made some effort to inveigle complainant into paying part of their claims against him.

The bill claimed that the complainant was entitled to have Andrews account to him for the furniture, and damages for the ejectment of his family, and to discovery as to the real owner of his notes; and prayed that the notes might be delivered up and cancelled, and the transfer or collection of them enjoined, with decree for the value of the furniture, and the damages, and for preliminary injunction to the same effect, and for general relief.

That is the bill, and upon it, strange as it may seem, an injunction was granted, the parties were required to answer, and the suit was gravely heard on bill and answers, there seeming to have been no replications.

The answer of Andrews, we may add, denies taking any furniture belonging to Jones, and all the other material allegations of the bill, and leaves the plaintiff's case not a leg to stand on. That of Reed does the same; and the cross-bill of Andrews sgts up a large indebtedness for rent and furniture and damages. The answer of Jones denies this, and reiterates the allegations of his bill.

As to the furniture, the testimony of Samuel T. Morgan, and the accounts exhibited with it, show that of the furniture left in the hotel by Mrs. Jones when she was "ejected," articles to the value of $1,370 were taken by the Navy Department, and that sum paid to Andrews for them, and that all the residue was sold by auctioneers for $1,404.75. Mrs. Jones took away a large quantity, leaving *none* not included in these accounts, and neither Andrews nor his agent ever took away or sold a single article. The hotel was furnished when Reed and Bryson rented it; and what Jones placed in it and Mrs. Jones did not take away, was not equal to that which was there when he received it.

It is not necessary, we think, to go more into detail as to the pleadings and evidence; for it is too evident to need argument or authority that the bill does not present a case that could give a court of equity jurisdiction.

Andrews had a judgment against Reed and Bryson, and garnisheed Jones, whose notes they held. He does not deny making the notes, nor that they are unpaid, but claims that

*Andrews* owes him for furniture taken "tortuously," and for damages for the ejection of his family, and that therefore the notes ought to be cancelled and given up, whether they belong to Reed and Bryson or to Andrews. That is the whole case.

It seems to be an attempt to set off the value of the furniture and the damages against the notes, on the ground that the notes had been endorsed to Andrews, and he was the legal owner of them. It is a claim to set off unliquidated damages caused by torts; for it is not a claim that taking the furniture and ejecting the family were in law a *payment* of the notes.

The bill states, as we have seen, that Andrews *received* the notes executed by Jones to Reed and Bryson, and also received payment of them as they fell due, up to a certain date; but that Andrews *procured the notes out of bank*, and delivered them up to Reed and Bryson, although they were his; and that *defendants* are about to sue on them. But, also, it demands a discovery as to who owns the notes, declaring that "he has no means or evidence of finding out or discovering which of said parties are the holders of said notes, except by a discovery." It is not, therefore, a part of the complainant's case, that Andrews is the holder or owner of the notes. On the contrary, it seems that he is *not* the holder; but, the averment is, that though held by Reed and Bryson, they are so held by collusion, belonging in reality to Andrews.

It has been held in a late case, that although at law the parties to the record alone will be regarded, a court of equity will, in a case of insolvency, regard the *real* parties, those ultimately to be affected by the decree, and allow a set-off of demands in reality mutual, though prosecuted in the names of others nominally interested. *Blake* v. *Langdon*, 19 *Verm.*, 485. And it might with some plausibility be urged that by garnisheeing Jones, Andrews became, as it were, assignee of the notes of Jones to Reed and Bryson, to the amount of his own judgment, so that in equity, any demand of Jones against him, which could be used by way of set-off, if the notes had been endorsed to him, can be used against him as garnishor, and the chancellor can decree that whatever Andrews may be found to owe Jones, shall be regarded as so much paid by Jones on his notes, and the same be credited to Reed and Bryson upon the judgment of Andrews against them.

But the law of the court will not permit this.

Courts of equity will extend the doctrine of set-off beyond the law, where peculiar equities intervene between the parties. They will allow a principal, against his agent, who having title to an estate, allowed his principal to expend money upon it without giving him notice of his title, to set-off the value of the improvements so made, against a claim for mesne profits received by the principal. The relation between the parties, in this case, creates the peculiar equity which induces the court to give such relief. 2 *Story Eq. Jur.*, § 1437 *b*.

That equity follows the law in matters of set-off, unless some peculiar equity attaches to the particular transaction, is held in *Gordon* v. *Lewis*, 2 *Sumn.*, 143, 628; *Howe* v. *Sheppard*, 2 *Sumn.*, 409; *Gass* v. *Stinson*, 3 *Sumn.* 99.

Where the court of equity does not find a *natural* equity, going beyond the statute of set-off, the construction is the same in equity as at law. The court has always been in possession of the doctrine of set-off, as grounded on the principle of such natural equity. *Ex parte Stephens*, 11 *Ves.* 27.

The statutes, 2 Geo. ii, ch. 22, and 8 Geo. ii, ch. 24, are no part of the law of equity in the Circuit Court; and we have no concern in this case with the bankrupt laws. Those courts have only, in respect to cases not affected by the bankrupt laws, the original jurisdiction of the English Chancery.

As to mutual debts and credits, courts of equity must make the same construction as the law, or else they would become mere courts of appeal, to reverse the decisions of the courts of law, on precisely the same facts. *Ex parte Stephens*, 11 *Ves.* 27. *Green* v. *Darling*, 5 *Mason*, 207. *Ex parte Blagden*, 19 *Ves.*, 467. Story remarks that this is not a very instructive account of the doctrine, for it leaves in utter obscurity what were the particular cases in which courts of equity did interpose upon principles of natural equity.

One case in which courts of equity allow a set off, where courts of law do not, is where there are *mutual credits* between the parties, the mutuality arising at the time of contracting the later debt, out of the existence of a prior one, due by the crediting party to the other. That is, the term "mutual credit" means, here, that both parties know of the existing debt, due to one party, whom the other party then credits,

trusting to such pre-existing debt, and the credit being given upon it, as a means of discharging the later one. In such a case there is a mutual equity, which warrants a court of equity in decreeing that one debt shall, *pro tanto*, be set off against the other. There it is eminently just to apply the theory of the Roman law by which one of two reciprocal debts is held to extinguish the other *pro tanto*, the difference between them being in reality all that is due. *Interest nostra potius non solvere, quam solutum repetere.* There it is just to hold that the law itself makes the compensation: *Id quod invicem debetur, ipso jure compensari.*

And it has been justly said by Mr. Justice Buller, Lord Mansfield, and Mr. Justice Dallas, that, wherever there is a *trust* on each side, between two men, that makes a mutual credit; that wherever there is a *trust*, that is, wherever one party, being indebted to another, *intrusts* him with goods, it is a case of mutual credit; and that mutual credit means something different from mutual debts, and must mean mutual *trust*. *Trench* v. *Fenn*, 3 *Doug.*, 257. *Olive* v. *Smith*, 5 *Taunt.*, 60. *Key* v. *Flint*, 8 *Taunt.*, 23.

Even in the case of equitable debts, if there is such a mutual credit, a set-off ought to be allowed in equity, for there is what is equivalent to an agreement, which the court ought to enforce, that there shall be such compensation.

It is exceedingly doubtful whether mere insolvency of one party will, of itself, constitute such an equity as will permit a court of equity to decree compensation. To do that, it would have to adopt the Roman law, and hold that where there are mutual debts one, *ipso jure*, compensates the other. Certainly it is most unjust that if a creditor of a bankrupt can only have a dividend of five per cent on what the bankrupt owes him, he must pay to the assignee even a greater sum than the whole due by him to the bankrupt; as Lord Hardwicke said was the law, in *ex parte Prescott*, 1 *Atk.*, 231. But this is a logical consequence of the nonsense of the English law, blindly adhered to in the United States every where, that mutual debts do not extinguish *each other*, but the compensation, or extinction *pro tanto*, is only effected by the judgment of the court. As this *is* the English and American law, a court of equity has no right to disregard it, and adopt the civil law in its stead. The consequence in question is no more absurd and outrageous than others that flow from the same nonsensical theory. For example, if Paul

holds John's promissory note, and is at the same time indebted to John on an open account, prescription may extinguish the latter debt, and leave the former in full force; and so the case is yet in some States, and was once in nearly all, where one debt was evidenced by a promissory note or bill of exchange, and the other by a bond. So, again, in many States, where justices have exclusive jurisdiction in case of contract, say to the amount of one hundred dollars, Paul sued on a note for five hundred, in a circuit court, cannot set off a debt due by note for seventy-five.

Lord Mansfield said that courts of equity followed the same rule as courts of law, to wit, that where there were mutual accounts *unconnected*, they could not be set off, but each must sue, "for, had they done otherwise, they would have stopped the course of law in all cases where there was a mutual demand." *Green* v. *Farmer*, 4 *Burr.*, 2220. The statutes of set-off intended to remedy this injustice; but they never extended to goods, or other specific things wrongfully retained. Therefore, neither a court of law nor one of equity can make the plaintiff, suing for such goods, pay first what is due to the defendant, except so far as the goods can be construed a pledge, and then the right of the plaintiff is only to redeem. *Ib.* So, conversely, and for precisely the same reason, if a party sues for a debt, he cannot be made to re-deliver to the plaintiff goods detained, or permit their value, or damages for their detention, or for other torts, to be set off against the debt.

If there is no *connection* between the demands, Story says, the rule in equity is the same as at law. But, if there is a *connection* between them, equity acts upon it, and allows a set-off under peculiar circumstances.

The right of set-off, at common law, is limited to cases of *mutual, connected debts*; and does not extend to such as are unconnected with each other. *Hurlburt* v. *Pacific Ins. Co.*, 2 *Sumn.*, 471. *Greene* v. *Darling*, 5 *Mason*, 201.

In *Gardner* v. *Lewis*, 2 *Sumn.*, 633. STORY J. said: "the jurisdiction of courts of equity, in matters of set-off, is very narrow, and closely follows that of the law. The mere fact of the existence of mutual demands constitutes no ground in equity for a set-off, however reasonable it might have been to have allowed it upon principles of natural justice. To justify a court of equity in allowing a set-off, there must be some original or intervening equity, beyond the mere

Schooner was right, as a precautionary measure, to have ported her helm when the whistle was blown, being in such dangerous proximity to the Steamship.

Captain Fox swears distinctly to such a custom, and that he fully understood it; and it relieved his mind very much when the whistle was blown, as he was in doubt whether he should persist in his course, as he saw the collision was imminent (34, 41).

Captain CRAMER swears distinctly to such a custom, and says not one in fifty but what followed it on that river, and gives his reasons for it (59, 60).

GEORGE CLIFFORD, who has sailed on that river for fou years past, swears to such a custom (67, 68).

Captain LEWIS, whilst unwilling to swear to it as a custom swears to it as a practice (54).

Captain BOWKER, for eighteen years a mariner, swears to it as a custom on that river (82).

Captain M. PHILLIPS, twelve years a mariner, swears to it.

Captain GASKELL, also (93, 94).

LEON KATZENBERG, (fol. 177,) their pilot, swears that *the whistle was blown for them to keep to the right.*

LETTS, who sailed in steamships, also swears to it as a custom. (Fol. 159.)

Captain HILTON swears that he took his order from the pilot, who told him to blow that whistle (223).

The pilot KATZENBERG, swears it was blown for the purpose of notifying the Schooner to port her helm (177).

ROBERTS, swears to such a practice (122).

GARVIN, also (137).

BOWKER, proves alarm to be 5 or 6 quick blasts, (fol. 87).

PHILLIPS, also (90).

It must be recollected, also, that the Steamer Western Metropolis was at that time a transport, in the Government service. It appears by the testimony of one or more of our experts, that the rule as to two steamers meeting each other, to whistle each other to go to right or left, was

by injunction of the Quartermaster's Department, carried into force as a rule on the Potomac River, between steamers and sailing vessels, for special reasons (82 and 83). It will be recollected that in February, 1864, as a historical fact, that the government were preparing for that series of movements known as "Grant's campaign in the Wilderness." This commenced on 4th May, 1864. Prior to that advance the Potomac river was filled with vessels, carrying stores and other articles necessary for that movement.

KATZENBERG, who was a licensed pilot of that river, having charge of that vessel, was skilled in that order, and when the whistle was blown knew its import. If the Captain, HILTON, who was accustomed to navigate the ocean, understood the signal differently he must take the consequences of interfering with the pilot in the performance of his duty by blowing that whistle.

The claimants have introduced DAGGETT, ELLIS and GLOVER, to prove that there is no such custom, but long blasts are blown as warning. On cross-examination it appears that all these witnesses have never travelled on the Potomac but only on the high seas, on which these signals are not intended to operate. And GLOVER, (fol. 205,) in *effect, says that when the steamship is in a tight fix, she may whistle the canvas to change her course* (fol. 205).

EIGHTH PROPOSITION.—Even if the Court are not satisfied that there is sufficient proof of a custom of blowing whistles in such cases, yet the Schooner was right in following any signal as she understood it thrown out by the Steamer, in the critical moment of her situation, and the Steamer would be estopped from setting up that as a fault.

(*a*) As Captain Fox (fol. 34.) says, he did not know but what she might have had a tow behind her, had anchored or was in such a position that she could not get out of the Schooner's way, and therefore blew that signal. For it is well known that during the war, monitors were repeatedly towed by large steamships on the Potomac and elsewhere on our Southern coast.

*(b.)* Sometimes, where no other duty is cast on a sailing vessel than that of pursuing her course, yet the Courts have held a sailing vessel in some cases bound to show lights—sometimes have considered a pertinacious adherence to strict rule as a fault. All those circumstances have occurred to sailing vessels in collision cases. There is no meaning to a steam whistle, unless it be that given to it by our witnesses, viz: to go to the right.

One or two of the Steamer's witnesses thought it meant to have her pursue her course—ADAMS, (258,) and WOOD, (234.) That could not be the meaning, inasmuch as KATZENBERG, the Steamer's pilot, says it was to go to the right and blown for that purpose.

*The man who had charge of the wheel of the Steamship blew it with that intention, and there is no room for doubt that such was the way it was received by the Schooner*, (177.)

What reason had the Steamer's people to suppose that the Schooner's people had not seen them? There they were with all their lights set, and, as the Schooner's witnesses show, they had her in view for four miles. Why should the Steamer's people consider that the Schooner's people required an alarm? It is all a pretence. They blew the whistle in order that they might get out of the tight spot in which they got by their own carelessness, in order to prevent their own vessel from being sunk. This is evident from the remark that Hilton made on the stand on my cross-examination, viz: What did you blow your whistle for? As a warning to him not to run into us (fol. 225.) What did this mean if it was an alarm to a vessel to keep on her course? Why, certainly that she (i. e., the Schooner,) should keep out of their way.

HILTON admits that KATZENBERG told him to blow that whistle, (223.)

NINTH PROPOSITION.—The Steamer was at fault in starboarding her helm after or simultaneously with blowing her steam whistle, and also after porting.

*(a.)* All the Schooner's people speak of this course contrary to her signal. The Steamer starboarded her helm after having ported it.

Captain Fox speaks of the starboarding and shows in confirmation of it that the port light of the Steamer was shut in, (39.) Geo. Clifford also speaks of it, (79.)

C. F. Letts, (158.)

John Smith, (103.)

Wm. Clemenshaw, (170.)

Katzenberg, the pilot, says he had the wheel so for five minutes, (176.)

Geary, Roberts, Hillyer, Garvin, all speak of it. They speak of a change of orders on the Steamer, the second mate crying out "port, port," the first mate crying "starboard, starboard." Also the blowing of the whistle all happening together.

*The following witnesses consider this change of orders as bringing about the collision :*

John Roberts, (120.)
A. Garvin, (137.)
Ed. Hillyer, (184.)
Wm. Geary, (148.)
Katzenberg, (176.)

All of whom were on the Steamer.

Captain Fox, (40.)
C. F. Letts, (160.)
John Smith, (104.)
Clemenshaw, (168.)
Clifford, (66.)

All on board the Schooner, consider the collision inevitable because of the change of order on the part of the Steamer, and there can be no doubt that it brought about the collision. The Steamer by starboarding, varied three points from her course, yet not so much so as to strike the Schooner stem on, but, on the contrary, hit her on the port side, abaft her main chains. Now, in case she had ported, would she not have avoided the collision? Undoubtedly she would, as her head would have been on a different angle, and thereby have escaped impact on the Schooner, although a narrow escape.

Captain Hilton pretends to say that he starboarded his helm when he gave orders to back, not before. And be-

tween his seeing the Schooner and the orders to stop and back he had not moved his helm at all. This of itself would convict him, because he should have taken precautionary measures and not left it to the last moment.

All of the libellants' witnesses, whether on their own vessels or summoned from the Steamship, say that the Steamer might have avoided the collision, 1st, By porting their helm when they blew their whistle; 2d, By slowing, stopping and backing in time, or by not blowing the whistle and going to the left. Any one of these causes would have done it. All of these matters are charged in the libel as faults against the Steamship.

TENTH PROPOSITION.—The Steamer was in fault because her master took the control of the navigation of the vessel out of the hands of the regularly licensed pilot. This is evident by the testimony of Katzenberg, who says the Captain gave orders to starboard and to port, and blew the whistle himself, evidently without knowing about his signal, and said he had nothing to say, (fol. 176.)

Captain HILTON, from his testimony, shows that he was a reckless man and inexperienced. *He lays down* (fol. 222,) *the rule that it was the duty of steamships, when meeting sailing vessels, for each of the vessels to port their helm.* This shows his ignonance of the rules of navigation. He says further he blew the whistle to the Schooner to prevent her from running into him, (fol. 225.) What does this mean? Why, that the Schooner should keep out of his way. Kain, the Quartermaster, who had charge of the wheel, admits the vessel was in charge of the pilot, Katzenberg, yet he says he put the helm hard a-starboard *by order of the Captain, who also ordered the whistle blown,* (fols. 175, 176.)

ELEVENTH PROPOSITION.—Everything on the Steamer betokens unpreparedness—a want of attention to their duties on the part of their officers. *The bells were rung altogether,* the *whistle blown, order to starboard* given and *change to port, all at one time.*

Men were running forward. *The anchor was cockbilled,* (122,) *and the vessel was preparing to come to an anchor, and not to get out of the way of the Schooner. In such a state of affairs, the Steamer was presumptively in fault.*

JOHN ROBERTS swears that the second mate's watch was below, yet we find him on the forecastle deck giving orders in the absence of the chief mate, who ran out from under the hurricane deck and countermanded his orders, (121.)

See ROBERTS, GARWIN, HILLYER's and GEARY's testimony, (120, 137, 184, 148, 176.)

The second mate, *though produced by the claimants, does not contradict this,* (213.)

ROBERTS also speaks of the confusion on deck, all hands running forward to get a sight of the Schooner. The whistle, the starboarding the helm, the altercation between the officers about their contradictory orders, (116.)

ED. HILLYER is quite emphatic on the same side in establishing the same facts, (185.)

A. GARWIN and GEARY also substantiate the same thing.

Even KATZENBERG shows that contradictory orders were given to him to starboard his helm, then to port it, (175, 176.) The whistle was blown by the master himself, and his wheel in effect taken out of his charge. *The Captain must have thought the pilot was incapable, as he says on the stand that the pilot did not know how to steer,* (fol. 223.)

The engineer admits that all of the bells were rung sharply and at once, which is an evidence that they were taken by surprise (209).

Bells rung without intervals: engines backed; then a jar of the collision.

Captain Fox shows that he heard some one of the bells ringing as they came on to him. This is strikingly corroborated by the engineer's testimony (35).

TWELFTH PROPOSITION. — The speed of the Steamer was not sufficiently slackened in time before the collision.

It is contended and proved by the seamen and officers of the Steamer that she was running at half speed, or five knots an hour. This speed she kept up, however, from the time she saw the Schooner until just upon her.

Five knots an hour against wind and tide of a mass of 2,500 tons burthen is by no means a trivial object to dash against, and one which would call on the Steamer for extra precautions on the part of a vessel possessing it coming on a sailing vessel head and head.

The testimony of the engineer shows that the collision took place almost immediately after bells to stop and back were rung. CLEMENSHAW's testimony is in point also as to the suddenness of this (168).

WOOD, claimants' witness, makes Steamer's speed up to ringing the bells five and a half knots an hour (233).

THIRTEENTH PROPOSITION. — The opinion of Judge Shipman in the District Court, dismissing the libel of the owners of the Schooner, was evidently based on a misconstruction of the testimony in the cause. This is apparent from a perusal of it, with the light afforded by the case at bar.

In fact the learned Judge rejected the evidence (introduced by the libellants) of the different mariners of the Steamer—to wit:—of GARVIN, ROBERTS, GEARY, HILLYER, and of KATZENBERG, with these remarks:

"Several of the hands on board of the Steamer were examined by the libellants, to prove that there was a great confusion and contradictory orders on board, the second mate giving one order and the mate another. But their statements are inconsistent with each other, with the obvious facts and with the testimony of the officers of the Steamer. *I therefore give them little or no credit.*"

In consequence of his rejection of their testimony it is supposed that the learned Judge dismissed the libel.

The learned Judge erred in saying that their statements were inconsistent with each other. This Court by examining their testimony and by contrasting it, will perceive that it is remarkably harmonious.

They, all of them, unite in saying that the two vessels were approaching each other on courses which, if preserved, would bring them together head and head (117, 136, 146, 183).

That the whistle was blown when the two vessels were about 300 yards apart (116, 135, 183).

That up to that time the Schooner kept her course (117, 136, 184), but the Steamer made no effort to avoid the Schooner save the blowing the whistle.

They all speak of the contradictory orders given by the first and second mate of the Steamer (115, 116, 134, 135, 144, 184). They believe such contradictory orders to have led to the collision (137, 148, 184).

They all speak of the confusion existing on board of the Steamer at the time of the collision (116, 138, 185); also, of the signals of their lookout being repeated and not noticed by those in the wheel house of the Steamer (114, 115, 134, 182). That the bells were rung altogether, the whistle blown, order to starboard given, and change to port all at one time.

The learned associate Justice holding the circuit below, paid attention (and we maintain most properly) to this testimony, and it aided his mind in coming to the conclusion to reverse the judgment of the District Court. He found, as was the fact, that it strongly corroborated the testimony of those on the Schooner.

The learned District Judge also says, "as to the relative positions and courses of the vessels with respect to each other, the decided weight of evidence shows, that had they continued their courses no collision would have taken place, each passing to the left or starboard of the other."

We maintain that this is unsound, as matter of fact, as appears by our previous points which discuss this question.

The learned District Judge did not, as was done by the learned associate Justice sitting in circuit, analyze the testimony given on the trial at length and compare it together. In that particular his opinion is untenable. So far as regards the testimony of the crew of the Steamer

thus rejected, the Circuit and District Courts were on an equal footing, as the evidence in question was in paper at the respective trials.

FOURTEENTH PROPOSITION.—The opinion of the learned associate Justice, sitting in Circuit below, and whose judgment is appealed from by the owners of the Steamship, shows that he thoroughly examined and canvassed the case, and that the conclusion he arrived at was sound.

A copy of that opinion is hereto annexed.

It is so terse that we cannot condense it without injuring its thoroughly compact argument.

FIFTEENTH PROPOSITION.—A point was advanced below by the counsel for the Steamship, to wit: that all hands in the Schooner were making sail, and while so engaged did not discover the Steamship until just upon her, and being, therefore, frightened, made the move in question, which the counsel urged brought about the collision.

The proofs in the cause, however, dispose of this theory, and as it may be urged here, we refer to the following portions of the evidence.

Captain Fox says, (fol. 32,) at 7 o'clock, P. M., we got around Lower Cedar Point, * * * we set our light sails about dark, which was then about 7 o'clock, P. M., I suppose; at half past 7 we were all on deck, except the cook. I was on the quarter near the wheel. The lookout was on the forecastle deck. * * * *

(Fol. 36.) *Q.* Just point out to his honor on that map the place of the collision.

*A.* It was about three miles above Blackstone Island, * * * witness indicates on map. *Cross-examined.*—He says that they commenced setting their light sails after we got around Lower Cedar Point, about 7 o'clock. They set the fore and main gaff topsails, which made six sails set. They had four sails set before, viz: fore and mainsail and two jibs. All hands set the sails.

He testifies further, that it was between $\frac{1}{2}$ to $\frac{3}{4}$ of an hour after that they had got around the lower Cedar Point before the collision (fol. 47).

He says, (fol. 49,) that they were about 15 to 20 minutes in setting the light sails.

CLIFFORD says, "When we first came around (fol. 66) Cedar Point it was about 7 o'clock; when we were within 4 or 5 miles of Blackstone Island we made Steamer's light ahead. Collision took place about a mile or so above Blackstone Island (fol. 74).

JNO. SMITH says, same distance also (fol. 101).

Same witness cross-examined (fol. 109.) "We were going as straight down the river as we could find our way. There was no change in the sails of our Schooner after the whistle blew; before the collision neither jib nor after sails. We had the sails, mainsail, foresail, two jibs, and two gaff-topsails set. *There was nothing done but what I have told on board of our vessel after we saw the Steamer's lights.*

LETTS says, collision took place at 10 minutes before 8 o'clock, P. M., about two miles above Blackstone Island.

On cross-examination, he shows he was not making sail (fol. 163).

CLEMENSHAW shows that the Steamship, after the collision, lay at anchor about six or seven miles further up the river all night (fol. 171).

From all this testimony it is apparent that the point taken is not real but only plausible, and has no foundation in fact.

*Lastly.* We urge that the decree of the Circuit should be affirmed with costs.

D. McMAHON, *Attorney,*
*And of Counsel for Owners and Claimants*
Of the Schooner Mary C. Town.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT.

BENJAMIN F. TOWN ET AL.,
*vs.*
THE STEAMSHIP WESTERN METROPOLIS, &c.

This was an appeal by the libellants from a decree of Judge Shipman in the District Court, dismissing the libel in this case.

NELSON, J.

The collision in this case occurred between the steamer "Western Metropolis" and the schooner "Mary C. Town," about eight o'clock in the evening of the 10th of February, 1864, on the Potomac, a few miles above Blackstone Island and light house. The Steamer was coming up the River and the Schooner going down; the wind was northerly, so that she had it nearly free, moving at the rate of about eight knots an hour; the Steamer half speed, intending soon to anchor, about 5 knots; the night was not dark, the Steamer having been seen some four or five miles ahead by the hands on the Schooner, and the Schooner some one and a half or two miles, though there is some diversity of opinion among the hands on board the Steamer; each vessel however saw the other in time to adopt and follow out proper measures to avoid the disaster. As it was the duty of the Steamer to take care of the Schooner and avoid her in passing, assuming that she kept her course, the *onus* rests upon the Steamer to show that she did not keep it, or some other fault that contributed to the collision. This she has undertaken, and insists that she changed her course as the two vessels approached each other, and thereby defeated the movement of the Steamer to pass her in safety, by starboarding her helm, and passing under her (the Schooner's) stern, the latter porting about the same time and giving way in the same direction. The whole defence turns upon this position. The Court below found the Schooner in fault and dismissed the libel on this ground. After the best examination we have been able to give the case, we regret to say we connot concur in this opinion;

we are forced to the conclusion that this movement of the Schooner was made under impending danger and *in extremis*, and for which the Steamer must be held responsible.

The clear weight of the proof is that the Steamer was within from 300 to 400 yards of the Schooner when the latter ported her helm, and nearly dead ahead. The combined speed of the two vessels was about twelve or thirteen miles an hour; they must have come together in one and a quarter of a minute or less than two, after the change of course of the Schooner. There were five hands on the Schooner including the master, who were all on deck and witnessed the collision, and who maintain this account of it. In addition to this there are five of the hands on board of the Steamer, including the pilot, who have been examined for the libellants and confirm it. So do the master, second mate and wheelsman of the Steamer, examined by the claimants. The master, Hilton, says the Schooner was a mile more or less off when he discovered her; would not name the distance; that it was a very short time afterward, would not say how short, the collision occurred; and further, that it occurred a very short time after the Schooner changed her course; would not say how short, although pressed by the Counsel for the libellants. This master seems to have been quite uninformed as to his duties; he says if two vessels—one a steamer the other a sailing vessel—are approaching head and head, it is the duty of each to port and to go to the right, and that there is no distinction between a Steamer and a sailing vessel and two Steamers as to the duty. The second mate, Cowan, says that he went up on the forecastle on hearing the Schooner reported; that he then first saw her; that it was about five minutes after he saw her the collision occurred; that the Schooner was about a quarter of a mile off when he first saw her; that she was very close when she crossed the Steamer's bows; and he adds, "As near as I can judge she (the Schooner) was not more than the length of our ship, 250 or 300 feet off, when she altered her course;" again he repeats in answer to the question, "About how far off was the Schooner from you when she commenced to put her helm to port?" "I judge somewhere between 250 and 300 feet." The quartermaster, Kain, who was at the wheel, says the Schooner was a very short distance off when he

first saw her, and that the master blew the whistle a very short time after this; and to the question, "How long was it after blowing the whistle that the Schooner kept away?" he answered, "right away;" how soon? "quick as thought." "She had not kept away before that, had she?" "No, sir." The same witness states, "I put the wheel hard a-starboard by his (Captain's) orders." "Before or after the whistle blew?" "Immediately after the whistle blew."

Now this testimony strongly corroborates the account of the collision given by the hands on the Schooner. To them the Steamer appeared approaching nearly a-head, and as she neared them without any indications of a change of course, it is not surprising that some alarm should exist on board the Schooner. The Master says in this state of anxiety, and when a collision seemed almost inevitable, he heard the whistle of the Steamer, one long blast, which he took to mean or indicate that the Schooner should go to the right, and he immediately ported her helm and bore away. Now at this point of time the hands on the Schooner say the Steamer was only some 300 or 400 yards off. The master of the Steamer, that the collision was a very short time after the change of the course of the Schooner. The second mate of the Steamer, that the Schooner was only 250 or 300 feet off when the change took place; and the quartermaster, the wheelsman, that the Schooner did not change her course till after the Captain blew the whistle. This witness also says, that the Schooner was but a very short distance off when he first saw her; that the whistle was blown a very short time after this; that it was still later when the Schooner first changed her course; that he did not starboard her helm, and of course made no change in the course of the Steamer till after the whistle was blown. The pilot of the Steamer agrees with the hands on the Schooner, that the latter was not over 300 yards off when she changed her course, and according to his account of the transaction, the Schooner, when her light was first discovered, was supposed by him and the master to be a vessel at anchor, and that they steered directly toward her till they discovered she was under weigh, when they starboarded their helm. Upon the whole we feel a very strong conviction upon the evidence,